RECORD AND BRIEFS

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No. 15-1262

In the Supreme Court of the United States

PATRICK MCCRORY, in his capacity as Governor of North Carolina, NORTH CAROLINA STATE BOARD OF ELECTIONS, and A. GRANT WHITNEY, JR., in his capacity as Chairman of the North Carolina State Board of Elections,

Appellants,

v.

DAVID HARRIS and CHRISTINE BOWSER,

Appellees.

On Appeal from the United States District Court for the Middle District of North Carolina

JOINT APPENDIX VOLUME III

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Rucho-Lewis Congress 3

Split VTD's in Districts with 40% or Greater Total Black Voting Age Population

District	Total Pop	VAP	TBVAP	Percent TBVAP	Total VTDs	Split VTDs	Percent of VTDs Split
1	733,499	561,408	295,606	52.65%	288	35	12.15%
12	733,499	544,436	275,812	50.66%	179	6	3.35%

2001 Congressional Plan - Districts with Non-Hispanic White VAP Under 50%
Election Contest Winners and Voting Age Population by Race and Ethnicity

District	Election Winners				Race					Ethnicity	Race and Ethnicity	Deviation from 2010 Ideal District Population (733,499)	
	Year	Name	Race	Party	White	Any Part Black	Native American	Asian/Pacific Islander	Other	Hispanic	Non-Hispanic White		
1	2010	Butterfield	B	D	46.92%	48.63%	0.83%	0.77%	2.36%	4.15%	45.59%	97,563	-13.30%
	2008	Butterfield	B	D									
	2006	Butterfield	B	D									
12	2010	Watt	B	D	45.63%	43.77%	0.51%	3.46%	5.83%	10.11%	42.40%	2,847	0.39%
	2008	Watt	B	D									
	2006	Watt	B	D									
Statewide (without regard to districts):					71.08%	21.18%	1.20%	2.19%	3.54%	6.79%	68.44%		

Election winner content is based on information posted by the North Carolina State Board of Elections.
Population information is based on the 2010 census, as included in the 2011 NCGA redistricting database.
With the exception of 'Any Part Black', all race categories are single race.
Note that the 'White' race category is without regard to ethnicity, and so includes people who are Hispanic or Latino. 'White Non-Hispanic' excludes that portion of the population.
'Any Part Black', also referred to as 'Total Black', includes both single race black and multi-race where one of the component races is black.



NCGA - ISD 11/10/2012

DEFENDANT'S EXHIBIT

Case No. 13cv949

2001 Congressional Plan - Districts with Black Voter Registration Over 40%
Election Contest Winners and Voter Registration by Party and Race

District	Election Winners				Democrats	White Portion of Dems	Black Portion of Dems	Republicans	Unaffiliated	Registration by Race Only				Deviation from 2010 Ideal District Population (733,499)	
	Year	Name	Race	Party						White	Black	Native American	Other		
1	2010	Butterfield	B	D	67.78%	30.72%	66.55%	16.59%	15.34%	46.03%	50.66%	0.54%	2.78%	97,563	-13.30%
	2008	Butterfield	B	D											
	2006	Butterfield	B	D											
12	2010	Watt	B	D	58.42%	23.38%	71.46%	21.34%	20.11%	45.26%	48.56%	0.27%	5.90%	2,847	0.39%
	2008	Watt	B	D											
	2006	Watt	B	D											
Statewide (without regard to districts):					44.65%	53.37%	41.38%	31.60%	23.60%	73.12%	21.63%	0.78%	4.47%		

Election winner content is based on information posted by the North Carolina State Board of Elections
Population and voter registration information is as contained in the NCGA 2011 redistricting database
Note that all of the categories in this report are without regard to ethnicity, and so include Hispanic voters
The NCGA 2011 redistricting database does not contain any ethnicity-by-race categories for voter registration, such as 'White Non Hispanic' that is available for census counts
The 'Other' race category in this chart includes both multi-race voters and those voters for whom a race indicator was not present in the source data



NCGA-SD 11/30/2012

DEFENDANT'S EXHIBIT
Case No. 13cv949
Exhibit No. D-2.84

SCSJ Congress - Districts with Black Voter Registration Over 40%
Incumbents and Voter Registration by Party and Race

District	Incumbent			Democrats	White Portion of Dems	Black Portion of Dems	Republicans	Unaffiliated	Registration by Race Only				Variation from 2010 Ideal District Population (733,499)	
	Name	Race	Party						White	Black	Native American	Other		
1	Butterfield	B	D	66.86%	31.55%	65.73%	17.34%	15.70%	47.40%	49.32%	0.51%	2.78%	0	0.00%
12	Watt	B	D	58.51%	23.32%	71.53%	21.30%	20.06%	45.17%	48.70%	0.28%	5.85%	--	0.00%
Statewide (without regard to districts):				44.65%	53.37%	41.38%	31.60%	23.60%	73.12%	21.63%	0.78%	4.47%		

Incumbents are based on office holders as of 3/25/2011, as available to district drawers using the NCGA 2011 redistricting database.
Incumbent race information is based on information posted by the North Carolina State Board of Elections
Population and voter registration information is as contained in the NCGA 2011 redistricting database.
Note that all of the categories in this report are without regard to ethnicity, and so include hispanic voters.
The NCGA 2011 redistricting database does not contain any ethnicity-by-race categories for voter registration, such as 'White Non Hispanic' that is available for census counts.
The 'Other' race category in this chart includes both multi race voters and those voters for whom a race indicator was not present in the source data.

DEFENDANT'S EXHIBIT

NCSBA - ED 11/30/2012
DEFENDANT'S EXHIBIT
Case No. 13cv649
Exhibit No. D-2.66

Congressional Fair and Legal - Districts with Black Voter Registration Over 40%
Incumbents and Voter Registration by Party and Race

District	Incumbent			Democrats	White Portion of Dems	Black Portion of Dems	Republicans	Unaffiliated	Registration by Race Only				Deviation from 2010 Ideal District Population (733,499)	
	Name	Race	Party						White	Black	Native American	Other		
1	Butterfield	B	D	66.74%	31.64%	65.66%	17.78%	15.40%	47.71%	49.12%	0.51%	2.66%	-1	0.00%
12	Watt	B	D	57.39%	24.61%	69.14%	20.91%	21.55%	46.09%	46.54%	0.27%	7.10%	-1	0.00%
Statewide (without regard to district):				44.65%	53.37%	41.38%	31.60%	23.60%	73.12%	21.63%	0.78%	4.47%		

Incumbents are based on office holders as of 3/25/2011, as available to district drawers using the NCGA 2011 redistricting database
Incumbent race information is based on information posted by the North Carolina State Board of Elections
Population and voter registration information is as contained in the NCGA 2011 redistricting database.
Note that all of the categories in this report are without regard to ethnicity, and so include Hispanic voters.
The NCGA 2011 redistricting database does not contain any ethnicity-by-race categories for voter registration, such as 'White Non Hispanic' that is available for census counts
The 'Other' race category in this chart includes both multi-race voters and those voters for whom a race indicator was not present in the source data

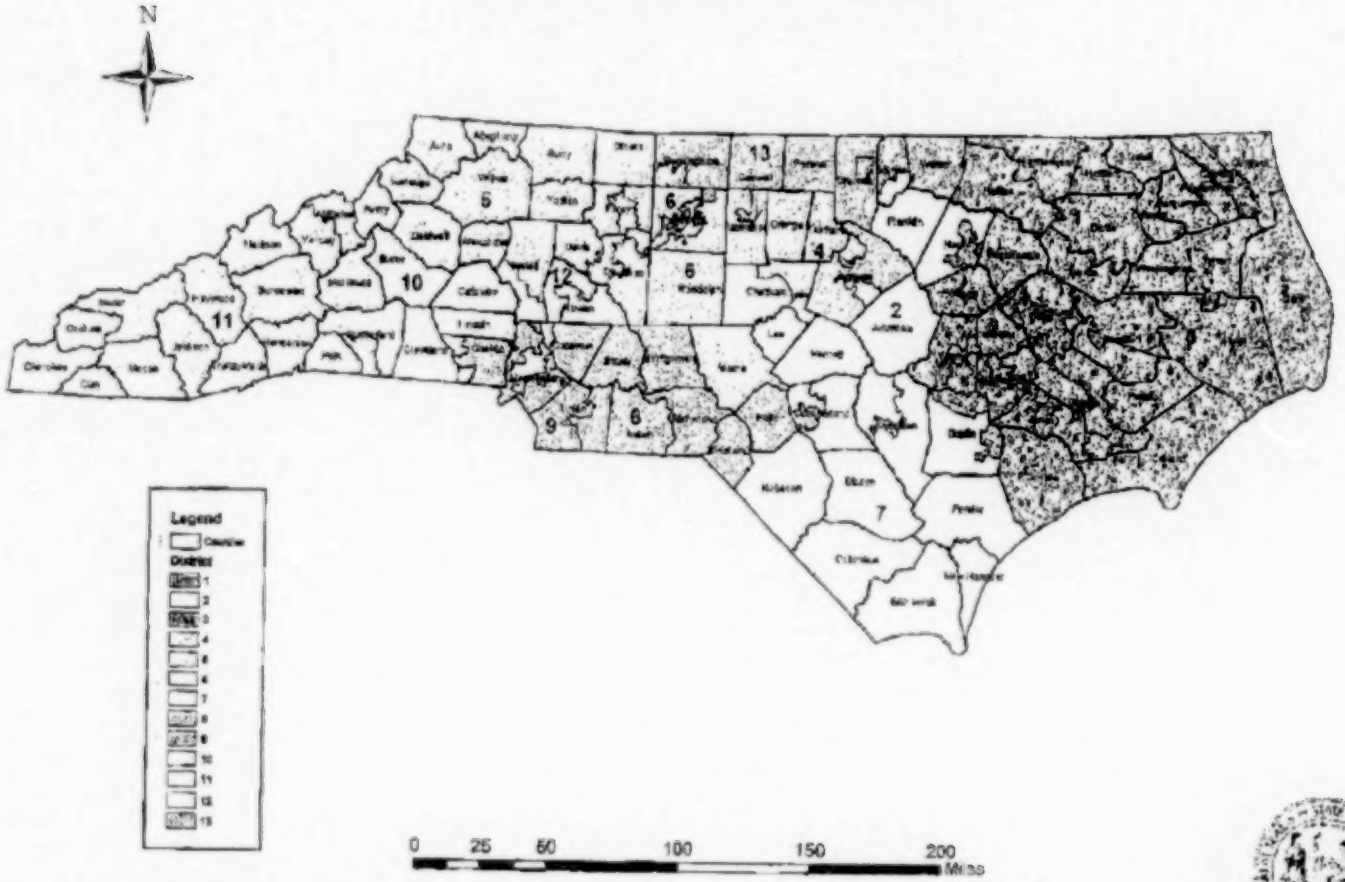


1774 - GD 11/29/2012
DEFENDANT'S EXHIBIT
Case No. 13cv949
Exhibit No. D-2.67

EXHIBIT 5

Forth Affidavit of Dan Frey
Congress ZeroDeviation – 2010 Census

Congress ZeroDeviation



North Carolina General Assembly

Ideal Vrs. Actual Populations Based on 2010 Census Results
Congress ZeroDeviation

Data Source: 2010 Census

District	2010 Pop	Ideal Pop	Ideal +/-	% +/-
1	635,936	733,499	-97,563	-13.30%
2	741,576	733,499	8,077	1.10%
3	735,979	733,499	2,480	0.34%
4	826,878	733,499	93,379	12.73%
5	693,414	733,499	-40,085	-5.46%
6	714,412	733,499	-19,087	-2.60%
7	742,938	733,499	9,439	1.29%
8	709,449	733,499	-24,050	-3.28%
9	852,377	733,499	118,878	16.21%
10	689,468	733,499	-44,031	-6.00%
11	703,606	733,499	-29,893	-4.08%
12	736,346	733,499	2,847	0.39%
13	753,104	733,499	19,605	2.67%

North Carolina General Assembly

Stat. Pack Report of Total Population by Race and Ethnicity
Congress ZeroDeviation

Data Source: 2010 Census

	Total Population by Race																	Total Population by Ethnicity						
District	Total	White	% White	Black	% Black	NA	% NA	API	% API	Other	% Other	MR	% MR	MR Black	% MR Black	Total Black	Total % Black	Hisp	% Hisp	Non Hisp	% Non Hisp	White Non Hisp	% White Non Hisp
1	635,936	280,991	44.19%	316,742	49.81%	5,366	0.84%	4,987	0.77%	15,868	2.94%	10,262	1.61%	6,378	1.00%	322,120	43.60%	32,918	5.18%	603,017	94.82%	270,888	42.58%
2	741,576	446,851	60.25%	210,845	31.40%	5,634	0.76%	9,174	1.24%	49,473	6.67%	19,618	2.65%	10,403	1.40%	221,248	29.83%	92,209	12.43%	649,368	87.57%	414,248	55.86%
3	735,979	555,250	75.44%	122,750	15.68%	3,811	0.45%	10,366	1.41%	25,852	3.51%	18,197	2.47%	8,682	1.18%	131,461	17.86%	54,648	7.41%	681,431	92.59%	532,816	72.40%
4	826,878	592,832	68.99%	159,509	18.29%	3,701	0.46%	64,166	8.56%	36,568	4.42%	20,091	2.43%	8,570	1.04%	168,088	20.32%	74,986	9.07%	751,890	90.80%	521,360	63.05%
5	693,414	580,454	85.50%	94,419	7.85%	2,043	0.29%	8,318	1.20%	24,414	3.52%	10,766	1.55%	4,648	0.70%	55,268	8.55%	45,125	6.51%	648,281	93.49%	576,117	83.08%
6	714,412	587,833	82.30%	73,182	10.25%	3,669	0.54%	12,078	1.62%	24,313	3.40%	12,080	1.69%	5,681	0.79%	79,773	11.03%	48,961	6.85%	665,451	93.15%	547,251	76.41%
7	742,938	477,817	64.31%	184,589	20.81%	59,273	7.55%	8,356	0.65%	28,281	3.84%	15,688	2.11%	7,190	0.98%	191,722	21.77%	51,566	6.94%	691,352	93.06%	491,198	62.07%
8	709,449	413,677	58.34%	201,590	28.42%	18,790	1.94%	18,526	2.59%	43,540	6.14%	20,320	2.56%	10,911	1.54%	212,501	29.94%	91,724	12.93%	617,725	88.44%	388,384	54.31%
9	852,377	643,760	75.55%	124,129	16.09%	8,310	0.99%	27,045	3.29%	31,133	3.66%	18,213	2.14%	8,801	1.03%	137,121	16.09%	60,683	5.16%	792,784	91.84%	611,230	71.71%
10	689,468	584,377	84.74%	40,697	5.79%	2,180	0.42%	12,689	1.87%	18,185	2.64%	11,491	1.66%	5,884	0.81%	56,129	8.50%	37,960	5.60%	651,518	94.50%	547,663	82.34%
11	703,606	627,064	89.12%	29,072	4.13%	10,958	1.55%	5,897	0.83%	17,901	2.54%	12,774	1.82%	4,671	0.66%	33,743	4.80%	39,382	5.60%	664,221	94.40%	538,858	80.61%
12	736,346	312,384	42.42%	323,240	43.90%	3,896	0.53%	25,663	3.48%	52,848	7.18%	18,245	2.48%	11,007	1.49%	334,247	48.39%	91,180	12.38%	645,166	87.62%	284,068	38.58%
13	753,104	462,750	60.12%	214,804	28.52%	4,291	0.57%	21,028	2.79%	41,728	5.54%	18,532	2.46%	10,236	1.36%	228,029	29.69%	76,942	10.02%	673,162	89.38%	423,417	56.22%
Totals:	9,555,483	6,626,109	69.47%	2,048,828	21.48%	123,110	1.29%	215,899	2.26%	414,030	4.34%	205,180	2.15%	102,828	1.08%	3,164,488	33.15%	902,130	9.39%	8,731,363	91.61%	6,223,968	65.37%

North Carolina General Assembly

Stat. Pack Report of Voting Age Population by Race and Ethnicity
Congress ZeroDeviation

Data Source: 2010 Census

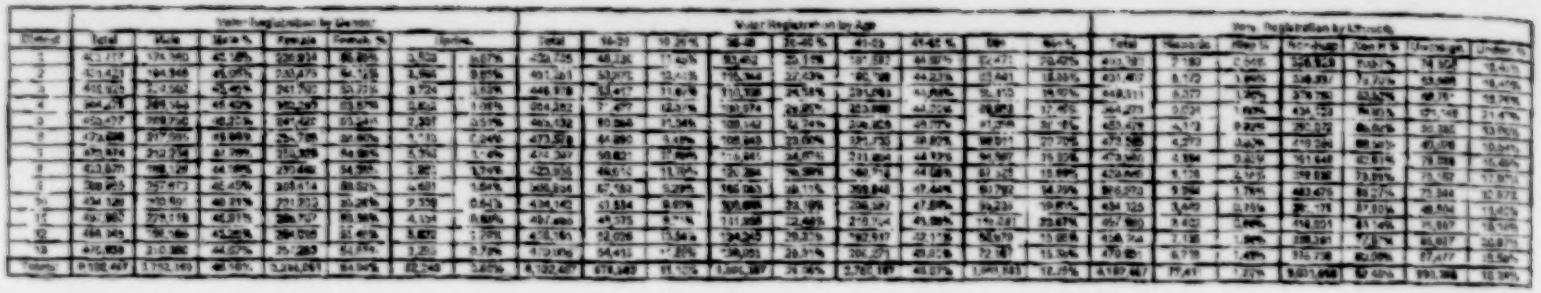
Voting Age Population by Race																	Total Population by Ethnicity					
District	Total	White	% White	Black	% Black	NA	% NA	API	% API	Other	% Other	MR	% MR	MR Black	% MR Black	Total Black	% Total Black	Hisp	% Hisp	Non Hisp	% Non Hisp	White Non Hisp	% White Non Hisp
1	486,842	228,490	46.92%	234,036	48.07%	4,054	0.83%	3,753	0.77%	11,509	2.36%	5,081	1.04%	2,721	0.56%	236,757	48.63%	20,209	4.15%	466,633	95.85%	221,887	45.58%
2	560,691	346,723	61.84%	184,449	32.89%	4,107	0.73%	7,264	1.30%	30,048	5.36%	9,073	1.62%	3,919	0.71%	188,368	33.59%	24,887	3.97%	485,794	90.20%	329,737	59.36%
3	586,638	440,549	75.13%	92,386	15.75%	2,732	0.46%	8,114	1.45%	16,499	2.91%	5,328	1.47%	2,883	0.52%	95,921	16.47%	34,298	6.00%	552,427	89.98%	426,113	75.20%
4	602,731	425,038	66.62%	118,314	18.00%	2,893	0.42%	30,897	6.42%	23,312	3.74%	9,591	1.65%	3,834	0.64%	127,148	19.61%	47,864	7.11%	674,777	92.29%	477,845	68.43%
5	657,992	476,154	67.52%	40,266	7.49%	1,528	0.28%	5,799	1.08%	14,661	2.71%	4,974	0.82%	1,598	0.29%	41,835	7.78%	27,097	5.03%	510,791	94.97%	482,108	89.63%
6	649,206	482,368	84.28%	64,171	8.87%	2,700	0.36%	8,930	1.75%	14,800	2.84%	5,439	0.99%	1,853	0.34%	66,024	10.21%	29,488	5.27%	519,887	94.72%	452,305	87.05%
7	574,335	387,150	67.38%	114,488	19.93%	42,268	7.36%	4,816	0.86%	18,204	3.18%	7,448	1.30%	2,548	0.44%	117,044	20.37%	21,764	3.88%	540,781	94.44%	378,610	66.03%
8	625,235	534,612	91.77%	142,726	27.17%	8,982	1.82%	12,138	2.31%	26,975	5.14%	9,402	1.79%	4,088	0.77%	146,797	27.86%	43,810	8.50%	475,382	90.50%	376,861	58.36%
9	591,947	466,662	77.77%	69,125	14.16%	2,360	0.39%	10,920	3.17%	18,828	3.15%	9,491	1.84%	3,780	0.91%	82,963	14.70%	44,284	7.09%	584,063	93.90%	497,405	74.39%
10	628,640	467,743	88.62%	44,324	8.43%	1,819	0.31%	8,933	1.39%	11,358	2.15%	4,899	0.92%	1,424	0.27%	46,660	8.72%	23,888	4.36%	526,381	95.84%	447,773	84.72%
11	561,917	516,264	80.67%	21,887	3.90%	7,570	1.36%	4,273	0.76%	11,972	1.89%	6,662	1.18%	1,491	0.26%	28,579	4.19%	24,241	4.31%	537,676	95.69%	486,870	86.78%
12	550,976	251,363	45.88%	259,212	47.97%	2,520	0.61%	19,065	3.46%	32,130	5.89%	9,582	1.75%	4,940	0.90%	341,189	62.77%	55,880	10.11%	496,250	89.89%	236,890	42.40%
13	570,871	398,607	93.00%	168,810	27.47%	2,960	0.52%	16,668	2.79%	25,918	4.81%	9,227	1.62%	4,287	0.75%	181,100	28.22%	50,080	9.77%	520,791	91.23%	340,942	59.72%
Totals:	7,265,848	5,156,759	71.00%	1,467,453	20.84%	87,717	1.20%	169,730	2.19%	356,620	3.64%	98,268	1.35%	38,780	0.53%	1,536,733	21.16%	482,350	6.78%	6,781,518	93.21%	4,864,338	66.44%

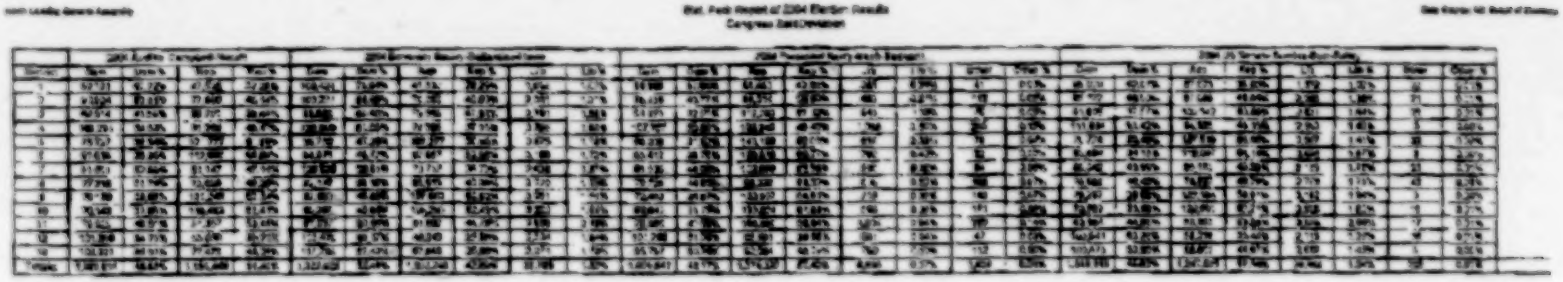
North Carolina General Assembly

Stat. Pack Report of Voter Registration by Party and Race
Congress ZeroDeviation

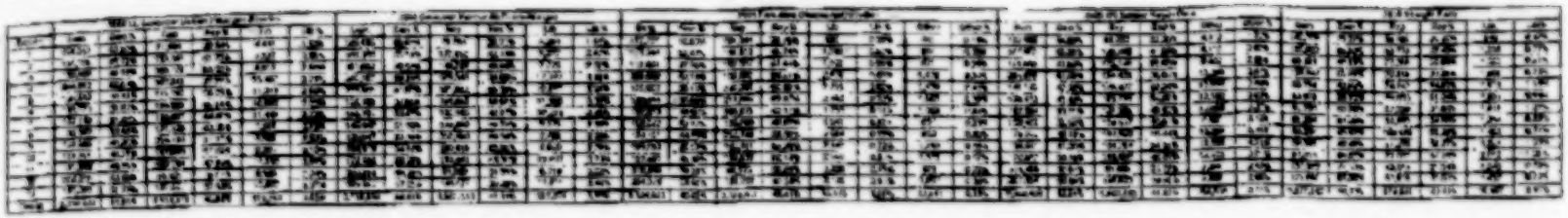
Data Source: NC Board of Elections

Registration by Party																		Registration by Race Without Regard to Party			
			Racial % among D's					Racial % among R's					Racial % among U's								
District	VR Total	% D	White % of D	Black % of D	NA % of D	Other % of D	% R	White % of R	Black % of R	NA % of R	Other % of R	% U	White % of U	Black % of U	NA % of U	Other % of U	% L	% White	% Black	% NA	% Other
1	483,720	47.76%	30.72%	66.55%	0.83%	2.50%	46.89%	89.67%	6.67%	0.24%	3.42%	16.64%	62.09%	28.59%	5.46%	3.70%	5.09%	64.69%	32.66%	0.84%	2.76%
2	436,367	58.69%	47.04%	49.84%	0.43%	4.19%	34.59%	93.32%	3.21%	0.27%	3.22%	21.96%	73.27%	17.06%	0.49%	9.18%	0.18%	83.16%	11.57%	0.89%	4.59%
3	466,021	48.80%	62.34%	33.68%	0.21%	3.23%	34.64%	90.38%	1.77%	0.16%	2.74%	24.40%	83.43%	8.43%	0.37%	5.97%	0.18%	79.09%	16.38%	0.21%	3.71%
4	694,279	43.70%	57.22%	35.84%	0.99%	7.05%	36.87%	84.27%	1.56%	0.73%	4.91%	28.32%	77.73%	6.75%	0.29%	10.29%	0.27%	73.64%	19.14%	0.22%	6.01%
5	463,612	53.67%	78.03%	16.06%	0.17%	2.87%	43.44%	87.97%	0.97%	0.69%	1.97%	22.77%	90.61%	4.20%	0.20%	4.72%	0.16%	89.69%	7.68%	0.18%	2.44%
6	475,899	52.37%	70.74%	25.91%	0.29%	3.37%	43.06%	87.67%	0.66%	0.17%	1.47%	23.89%	85.07%	5.91%	0.32%	8.93%	0.16%	89.82%	8.91%	0.28%	2.93%
7	474,803	48.80%	31.07%	67.18%	0.85%	2.99%	38.17%	83.70%	2.79%	1.09%	3.51%	23.88%	80.48%	10.10%	2.33%	6.05%	0.16%	69.63%	21.16%	0.58%	2.44%
8	434,110	49.39%	43.41%	50.21%	1.59%	5.09%	37.69%	91.39%	3.25%	0.79%	4.16%	22.94%	73.12%	19.34%	1.57%	10.36%	0.16%	63.17%	33.69%	1.19%	8.06%
9	590,982	53.69%	69.24%	33.04%	0.27%	6.45%	39.37%	86.67%	1.13%	0.19%	2.79%	20.88%	80.09%	7.99%	0.21%	8.51%	0.17%	86.49%	13.09%	0.23%	6.89%
10	494,169	54.62%	78.70%	21.39%	0.12%	2.87%	41.29%	87.61%	0.84%	0.06%	1.63%	23.81%	91.31%	3.99%	0.17%	4.69%	0.18%	93.91%	5.89%	0.12%	2.79%
11	467,687	39.39%	80.73%	7.68%	0.35%	2.66%	32.90%	87.34%	0.43%	0.54%	1.79%	28.03%	92.43%	1.99%	1.18%	4.43%	0.18%	93.09%	3.71%	0.69%	2.84%
12	458,194	59.42%	29.39%	71.44%	0.20%	4.32%	37.84%	86.63%	5.96%	0.22%	2.39%	26.11%	80.28%	27.57%	0.39%	11.47%	0.18%	48.26%	48.69%	0.37%	5.59%
13	570,825	51.64%	47.29%	47.67%	0.59%	4.05%	38.51%	83.59%	2.69%	0.16%	3.22%	23.28%	74.92%	18.04%	0.29%	8.75%	0.17%	86.69%	10.63%	0.26%	3.45%
Totals:	6,165,467	44.68%	62.37%	31.39%	7.16%	4.09%	37.40%	88.24%	1.83%	0.33%	2.51%	23.68%	80.78%	10.74%	0.68%	7.80%	0.15%	73.12%	21.63%	0.71%	4.47%









North Carolina General Assembly

Stat. Pack Report of 2010 Election Results
Congress ZeroDeviation

State Board of Elections

District	2010 Statewide Party						2010 US Senate Statewide Result					
	Dem	Dem %	Rep	Rep %	Lib	Lib %	Dem	Dem %	Rep	Rep %	Other	Other %
1	74,178	77.32%	21,347	22.25%	446	0.46%	103,379	58.16%	70,196	39.50%	3,983	2.35%
2	54,817	57.50%	39,438	41.91%	584	0.60%	88,921	47.89%	93,978	50.36%	3,449	1.75%
3	33,444	41.30%	46,841	57.79%	765	0.94%	64,167	32.36%	131,711	65.94%	3,849	1.70%
4	69,386	58.81%	46,086	39.07%	523	0.44%	148,287	53.09%	119,980	42.74%	6,106	2.17%
5	39,719	33.40%	52,565	65.33%	391	0.33%	86,867	31.33%	142,444	66.67%	4,736	2.00%
6	57,470	39.59%	85,262	70.04%	654	0.53%	68,864	28.58%	142,969	63.06%	5,370	2.36%
7	44,857	63.39%	24,765	35.00%	402	0.56%	86,401	41.35%	120,028	57.63%	4,040	1.93%
8	29,874	42.44%	39,018	55.42%	480	0.68%	76,528	46.40%	84,972	51.26%	3,212	1.91%
9	40,599	37.35%	66,748	62.16%	578	0.49%	69,217	35.00%	143,358	62.19%	4,244	2.14%
10	23,564	35.56%	41,705	63.46%	719	1.18%	76,057	61.29%	127,835	68.20%	4,661	2.51%
11	34,750	49.61%	34,625	49.08%	1,040	1.59%	87,643	47.27%	102,398	55.05%	5,843	2.77%
12	56,983	69.61%	26,825	32.63%	436	0.49%	106,537	62.81%	57,291	33.77%	2,605	1.45%
13	30,705	26.04%	42,145	34.01%	848	0.84%	100,716	61.77%	60,301	37.01%	4,729	2.90%
Totals:	597,972	51.24%	569,834	48.84%	8,911	0.76%	1,141,736	48.24%	1,444,882	61.13%	66,817	2.74%

* * * *

[2] (The proceedings were begun at 4:10 p.m.)

REPRESENTATIVE LEWIS: The House and Senate public hearing on redistricting will please come to order. I am Representative David Lewis, Chairman of the House Redistricting Committee. This is Senator Bob Rucho, Chairman of the Senate Redistricting Committee. Today's hearing is a joint effort of the Senate and the House Redistricting Committees.

And I would like to take a moment to pause now to allow all of the members of the committee who are here to briefly introduce themselves, starting with my friend from Mecklenburg.

SENATOR RUCHO: Yes. My name is Bob Rucho, and I am from District 39 in Mecklenburg County, and I'm the Chairman of the Senate Redistricting Committee.

SENATOR BROCK: Andrew Brock, representing Davie and Rowan County in the 34th Senate District.

SENATOR GRAHAM: Senator Malcolm Graham, representing Senate District 40 from Mecklenburg County.

SENATOR FORRESTER: Senator Jim

* * * *

[7] MS. FLEMING: Jessica Holmes.

MS. HOLMES: Mr. Chairman and members of the committee, my name is Jessica Holmes. I'm speaking to you on behalf of a coalition of nonprofit, nonpartisan organizations in North Carolina called the Alliance for Fair Redistricting and Minority Voting Rights, also known as AFRAM. AFRAM functions within 'a network of organizations, including the Southern

Coalition for Social Justice, Democracy NC, Blueprint NC, El Centro Hispano, the NAACP, the League of Women Voters, Grade Schools of Wake, Action NC, along with a host of other groups.

AFRAM believes that the public is best served by a redistricting process that is transparent, responsive to public input and fair to all North Carolina voters. We applaud your hard work in hosting hearings across the state.

However, today is the last of 36 hearings, and yet there is still no draft map for the public to critique. Thus, at this stage it is difficult for the public to provide meaningful comment. Consequently, the comments at these hearings have been restricted to a variation of pleas for a fair, nonpartisan and transparent process.

[8] The congressional map that will be presented to you today by the Southern Coalition for Social Justice has received feedback from the aforementioned organizations, as well as numerous other groups and individuals across the state. Citizens have had two opportunities to work alongside a cartographer to participate in the actual map drawing process. Additionally, the draft maps have been posted online for further review and critique. The members of AFRAM have worked together to produce a map that is legal, fair and includes public input. This draft map is proof that it is possible to work with the residents of this state in every phase of the redistricting process. AFRAM proudly boasts an honorable and authentic process premised upon map drawing sessions specifically designed to facilitate quality public input, as opposed to quantity in hearings.

We look forward to an opportunity to review your proposed maps. We ask that the redistricting committee post draft maps on the General Assembly website as soon as possible. Also, we ask that you host at least two public hearings once the maps are made public.

[9] I thank you for your time and consideration.

REPRESENTATIVE LEWIS: Thank you for your remarks.

MS. FLEMING: Anita Earls.

MS. EARLS: Good afternoon, Mr. Chairman and members of the committee. Thank you very much for this opportunity to submit comments. I am now speaking to you as – my name is Anita Earls. I am Executive Director of the Southern Coalition for Social Justice, and I am speaking to you on behalf of that organization.

And I want to respond directly to the March 31st, 2011, letter from you requesting information, and to follow along with each of the points that you requested information on. I have a written submission which I'll leave with you, so I won't read it, but I think the information in the reports that I have will be most useful to you.

But what I want to talk about is a few things. I do want to talk about the congressional redistricting map that we have drawn as an illustration of what is possible. I want to talk about racially polarized voting and give you the results of a study done by a political scientist [10] who looked at 54 recent elections in North Carolina. And then, third, I want to talk a little bit about the totality of the circumstances type evidence that's relevant in a Section 2 claim, but also

gives additional support for the general proposition that in order to have a fair redistricting plan that does not dilute the voting strength of minority voters in the state, we still need to have majority-minority districts. That's the fundamental proposition that all of this evidence relates to.

So just briefly, the map that we drew, as Jessica explained, came out of a process involving the community, but the point was to illustrate that it's possible to meet the federal one person, one vote requirement to comply with the Voting Rights Act, to preserve the core of existing districts which provide stability for voters so they know who has represented them before – they stay in the same district – unite important communities of interest. Another criteria that we tried to follow, minimize the number of split precincts and draw contiguous districts. Those were the main criteria that we tried to follow.

We contend that Congressional Districts 1 [11] and 12 are covered by the nonretrogression principle of Section 5 because they are districts that enable black voters to elect their candidates of choice and they are districts that include one or more Section 5-covered counties. So those two districts cannot be retrogressive. We took the current districts, put in the 2010 Census data, and our calculation is that the benchmark for the Congressional District 1 is 47.84 percent non-Hispanic, black voting age population, and the benchmark for Congressional District 12 is 42.40 percent. We were able to draw a map that substantially meets those benchmarks.

Congressional District 12 only needed 2,847 more people, so we didn't have to change that very much. And you'll see in the map that we've prepared, we tried – you'll see the existing district lines in green. We tried

to follow those lines as much as possible. And then we also have a chart that shows some of the population breakdown for these districts. We'd be happy to provide electronic block assignment files. This is a zero deviation Congressional plan that we think is illustrative of what's possible.

We do intend to also prepare plans for [12] the House and the Senate and, likewise, be able to submit those electronically, but we don't have them completed yet, so I hope that there will be an opportunity to share those as well.

Turning quickly to racially polarized voting, as I said, we asked an expert, Ray Block, who is a political scientist, to do – there were three different types of statistical analyses that political scientists can do to assess racially polarized voting. And understand that these are estimates of how voters vote. They don't actually know – you know, its not a secret ballot. Nobody knows how anyone votes, but by using the ecological inference analysis, this political scientist looked at 54 elections in 2006, 2008 and 2010. We looked at every white versus black election for Congress, State House and State Senate. The reason we chose those elections is because numerous court opinions, and I cite them in my testimony – numerous court opinions say that the most probative evidence of racially polarized voting comes from elections for the office at issue and when you have black versus white contests.

What his analysis showed was that unfortunately, we still have very high levels of [13] polarized voting in the state. Just as an example, in 2008, the percentage of black votes for the black candidates was 88 to 89 percent. In 2010, for the black candidates, the black vote percentage was 92, 93 percent across the

board. And while there are some black candidates who did get more than 50 percent white vote, in many instances they got less than 50 percent white vote, which is indicative of the fact that there is racially polarized voting in the state.

The third thing I'll just mention quickly is an article that's been published –

REPRESENTATIVE LEWIS: Wait just one moment, Ms. Earls, if you would. Ladies and gentlemen, it's the Chair's intent to enforce the five-minute rule. However, Ms. Earls is responding to a request of both of the Chairs, and that her time will be exceeded to allow her to address and come to the conclusion of her remarks, at least.

MS. EARLS: Thank you, Mr. Chairman. I'll be very brief. On the totality of the circumstances factors, substantial research was done in 2006 in connection with the reauthorization of the Voting Rights Act. It's published in a journal. All of the citations are documented. And [14] it's evidence of issues in North Carolina elections, some since 2000, that I think is an important part of the record to justify drawing majority minority districts. So if I can leave this material.

UNKNOWN: I will make sure he gets it.

MS. EARLS: Thank you very much.

REPRESENTATIVE LEWIS: Thank you for your comments.

MS. FLEMING: Richard Hatch.

MR. HATCH: My name is Richard C. Hatch. I reside in Cary, North Carolina. For many years I have advocated on behalf of seniors in the General Assembly as a member of AARP North Carolina, the

North Carolina Coalition on Aging and the North Carolina Senior Tarheel Legislature. Thank you for giving me this opportunity to express these views. These views are my own personal views.

For many years I wondered why some members of the General Assembly would retain their seats election after election. I was told they had safe seats, meaning that their districts were so configured, that the majority of them – of registered voters belonged to the incumbent's party. Well, after November's election, it turned

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North Carolina General Assembly

2011 Redistricting Public Hearing

May 9, 2011

Testimony of Anita S. Earls, Esq.
Executive Director, Southern Coalition for Social Justice

Mr. Chairmen and Members of the North Carolina General Assembly:

I am submitting these comments and the attached Information in response to the March 31, 2011 letter from Senator Rucho and Representative Lewis requesting information relating to the application of the Voting Rights Act and other federal and state laws to legislative and congressional redistricting in North Carolina. Thank you very much for the invitation to provide this Information and the opportunity to comment. I am speaking on behalf of the Southern Coalition for Social Justice in my capacity as Executive Director of the organization. I will respond directly to each of the matters listed in the March 31st letter.

1. Proposed legislative and congressional districts or plans. I hope to have an opportunity to supplement these comments once the Senate and House Redistricting Committees publicly introduce proposed plans.

Over the past year, the Southern Coalition for Social Justice has been engaged in extensive public

education in North Carolina about the redistricting process. We have held numerous statewide and local trainings. Once the 2010 Census data was available, invited the public to several map-drawing sessions where we used the Maptitude for Redistricting software to examine how population shifts in the 2010 Census Impact our legislative and congressional districts. All of these meetings were open to the public and, being hosted by a non-profit organization, we were strictly non-partisan in every aspect of the program.

Attached as Exhibit 1 is a Congressional redistricting map that resulted from this process of community engagement. The map shows existing district lines, and the new lines that correct for population imbalances while preventing retrogression in the effective majority-minority districts that include Section 5 covered counties. This is Intended as an illustrative map to demonstrate that It is possible to 1) meet the federal constitutional one-person, one-vote requirement; 2) comply with the federal Voting Rights Act; 3) preserve the core of existing districts thereby providing stability for many voters; 4) unite important communities of interest in the state; 5) minimize the number of split precincts and 6) draw contiguous districts. In drawing these districts, we tried to follow existing district lines as much as possible, particularly for districts that required only slight modifications to meet the one-person, one-vote standard, We contend that Congressional Districts 1 and 12 are covered by the non-retrogression principle of Section 5 of the Voting Rights Act because they are districts that enable black voters to elect their candidates of choice and they are districts that Include one or more Section 5 covered counties. Thus, we determined the benchmark as indicated by the Department of

Justice's guidance concerning redistricting, *see* Department of Justice, Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act, 76 Fed. Reg. 7470 (February 9, 2011). Using the P. L. 94-171 data, the benchmark for Congressional District 1 is 47.84% non-Hispanic Black voting age population. The benchmark for Congressional District 12 Is 42.40% non-Hispanic Black voting age population. The Illustrative map we have drawn easily meets the benchmark for District 12, which was nearly the right size to begin with and only needed to gain 2,847 people to meet the Ideal district size of 733,499. Congressional District 1 required an additional 97,563 people. In our plan that district does drop slightly in black voting age population, to 46.66%. We believe this remains a district in which black voters have an opportunity to elect their candidate of choice and therefore it is not retrogressive.

We are still working on House and Senate redistricting plans and will provide those to you as soon as they are completed.[1]

2. Existence of racially polarized voting In North Carolina elections. We asked a political scientist, Ray Block, Jr., to conduct an analysis of the extent to which voting in North Carolina's legislative and congressional elections continues to be characterized by racially polarized patterns. Attached as Exhibit 2 is his report. We asked him to examine every black vs. white contest in 2006, 2008 and 2010 for congress and the state legislature. We selected these elections because it is well-established that elections for the

[1] We can also provide electronic block assignment files for each of these plans so that you can more easily evaluate them.

offices at issue involving black and white candidates are the most probative of whether or not there is racially polarized voting. *See United States v. Charleston Co.*, 365 F.3d 341 (4th Cir. 2004), *Lewis v. Alamance County*, 99 F.3d 600, at 610 n.8 (suggesting that elections involving minority candidates may be more probative on the question of whether racial polarization exists"); *accord Ruiz v. City of Santa Maria*, 160 F.3d 543, 552-53 (9th Cir. 1998); *N.A.A. CP v. City of Niagara Falls*, 65 F.3d 1002, 1016-18 (2d Cir. 1995); *Nipper v. Smith*, 39 F.3d 1494, 1540 (11th Cir. 1994); *Jenkins v. Red Clay Consol. Sch. fist. Bd. of Educ.*, 4 F.3d 1103, 1128 (3d Cir. 1993). The report analyzes 54 elections and finds significant levels of racially polarized voting. The report also finds that the number of elections won by Black candidates in majority-minority districts is much higher than in other districts. This data demonstrates the continued need for majority-minority districts.

3. *Bartlett v. Strickland.* The primary impact of the North Carolina and U.S. Supreme Court opinions in this case is that plaintiffs seeking to prove a violation of Section 2 of the Voting Rights Act must demonstrate that it is possible to draw an illustrative district that is majority-minority in citizen voting age population.

4. Citizen voting age population. In *Bartlett*, the North Carolina Supreme Court concluded that Section 2 liability should be evaluated using citizen voting age population. We have been evaluating various methods for using ACS data to determine citizen voting age population. We do not have a written expert report on this topic at this time.

5. *Gingles* factors. Attached as Exhibit 3 Is a report on Voting Rights In North Carolina which was

published in the *Southern California Review of Law and Social Justice*. This report was prepared following a series of public hearings around the state in 2006 that sought Information about problems that African-American voters in the state were experiencing as they sought to participate In the political process. The report documents recent problems in voting as well as previous Section 5 objections and other evidence of voting rights problems.

I hope to have an opportunity to comment on other matters relating to Section 2 and Section 5 compliance once the public has an opportunity to view proposed redistricting plans.

Thank you again for the kind invitation to provide this Information.

Racially Polarized Voting In 2006, 2008, and 2010 in North Carolina State Legislative Contests:

A Report for the Southern Coalition of Social Justice

Prepared by: Ray Block, Jr.

EXECUTIVE STATEMENT

Summary: I assess 54 elections in the state of North Carolina in 2006, 2008, and 2010 to determine the degree to which African-American candidates for political office fall to win support of non-Blacks, 1 in the event that they are the preferred candidates among Black voters. Using a series of analytical techniques, Including descriptive statistics, correlation analysis, and Gary King's ecological Inference software, I provide evidence that non-Blacks consistently vote against African-American candidates and that Blacks demonstrate high rates of racial bloc voting in favor of co-ethnic candidates.

BACKGROUND AND EXPERIENCE

Ray Block is an Assistant Professor in the Department of Political Science and Public Administration at the University of Wisconsin, La Crosse. I received my PhD in Political Science from The Ohio State University. My research and teaching interests include racial and ethnic group politics, voting behavior, and research design. Details about relevant publications and professional experience appear in the curriculum vita at the end of this document.

PURPOSE OF THE ANALYSIS

I have been recruited by the Southern Coalition of Social Justice to explore voting patterns In U.S. and

North Carolina state congressional contests. In this report, I attempt to address the following questions:

1. Is there a relationship between the number of Blacks who vote in a particular district and the amount of votes that an African-American candidate receives?

2. Is there evidence of racial polarization in the preferences of voters who participate in electoral contests involving African-American candidates running against non-Black candidates?

3. Is the number of elections won by Black candidates higher in majority-minority districts than in other districts?

It should be noted that the relevant comparison is between Blacks and non-Blacks rather than Blacks and Whites. The goal here is not to make cross-racial comparisons but simply to determine the degree to which, for example, Blacks prefer co-ethnic candidates.

DATA AND IMPLEMENTATION

All the data used in subsequent analysis are drawn from files obtained from re directory site of the North Carolina Board of Elections (ftp://www.app.sboe.state.nc.us/ENRS/). These data are organized at the level of the congressional district for some of the electoral contests examined and state legislative units are the geographic locale for other races. In all cases, data are aggregated from the precinct and/or county level. Analyses and results utilize statistical software from a variety of sources, Including Microsoft Excel, State, R, and Gary King's EZI programming package.[2]

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[2] This procedure is the subject of King, Gary, *A Solution to the Ecological inference Problem: Reconstructing Individual*

The primary pieces of Information utilized in the analyses are:

- T= the proportion of votes cast for the African-America candidate in a given election contest
- X = the proportion of Black who voted in a given election contest 6 N = the number of total votes cast (regardless of candidate) n a given election
- MM = the proportion of election contests that took place in districts that were classified as "majority-minority" (in this case, majority Black) in either 2000 or 2010
- OUTCOME = the proportion of times an African-American candidate wins an election (i.e., earns the largest number of votes) between him/herself and a non-Black opponent

RESULTS AND DISCUSSION

To address the first research question, I create a scatter plot depicting the correlation between X (the proportion of votes cast for the African-American candidate) and T (the proportion of votes that were cast by North Carolina residents). The results are in Figure 1, I supplement the scatter plot with a correlation analysis, in this case, a correlation estimate that ls greater than zero suggests a *positive* relationship between X and T (i.e., the share of votes a Black candidate receives increases with the proportion of African American voters ln a given district).

Behavior from Aggregate Data (Princeton University Press, 1997).

Conversely, a negative correlation estimate represents an Inverse relationship in which the proportion of votes an African-American candidate earns decreases as the amount of Black voters in a jurisdiction Increases. A correlation of zero suggests no meaningful relationship between X and T. Taken together the results reveal a moderate and positive correlation between these variables (r = 0.4752), and strength of this correlation is great enough that we can conclude that it did not happen by chance (significance = 0.003).

To address the second question, I use King's ecological Inference methods to infer the proportion of African-American and non-Black voters in each electoral contest who preferred the candidate of color. As noted, King's programming package allows researchers to Infer individual behaviors from aggregate information, In this case, I simulate racial differences in candidate preference using the proportion of votes cast for the African-America candidate In a given election contest (T), the proportion of Black who voted in a given election contest (X), and the number of total votes cast of candidate) In a given election (N), I create separate tables of results for the 2006 (see Table 1), 2008 (see Table 2), and 2010 (see Table 3) election contests. In each table, the columns headed with "Beta B" indicate the proportion of African-American support for the candidate listed on left hand side. "Beta W" on the other hand, is the estimate of non-Black support for that candidate. The number patterns in these tables suggest the presence of racially polarized voting: compared to those of non-Blacks, the proportion of African Americans who prefer the Black candidate is noticeably higher than in virtually all of the electoral contests.

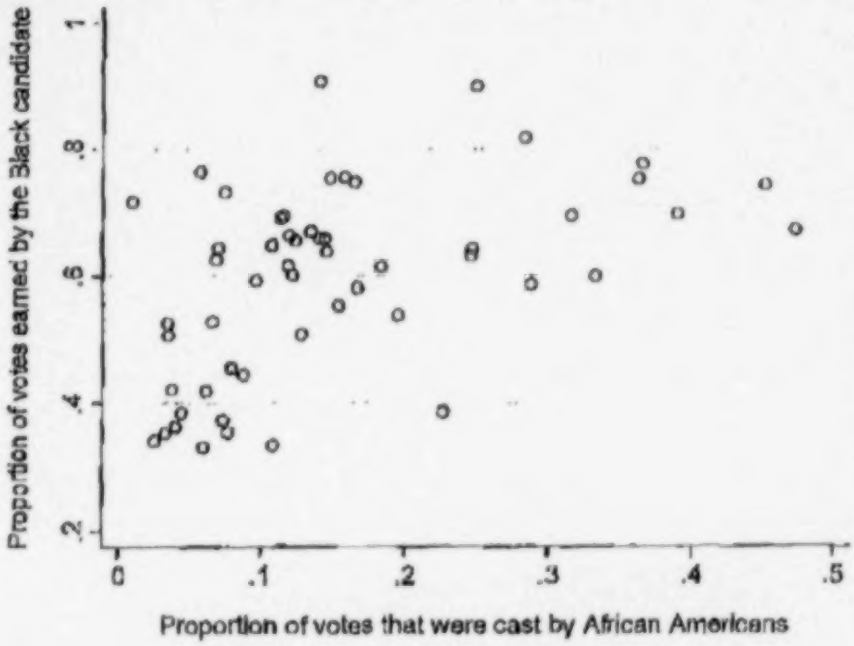
The final question pertains to effectiveness of majority-minority districts. Specifically, question 3 asks whether Black candidates are more likely to win elections in majority-minority districts than candidates of the same race in other districts. To evaluate this question, I sort the outcome of electoral contests (specifically, whether the African-American candidates "wins" or earns more votes than the non-Black candidate) by whether the electoral contest took place In a district that was met the definition of being "majority minority" In either 2000 or 2010. Figure 2 clearly illustrates that the proportion of Black candidates who win elections is noticeably higher in majority minority districts than In non-majority-minority districts and that the relationship between electoral success and district type is statistically significant (chi-square = 28.4211, sig. y 0.000).

CONCLUSION

I offer several different analytical approaches that each tell a similar story about the degree to which polarized voting exists in 2006, 2008, and 2010 North Carolina congressional district elections. Recall that, paraphrasing Justice Brennan's opinion in *Gingles,* racially polarized voting can be identified as occurring when there is a consistent relationship between the race of a voter and the way in which he votes. In all of the elections examined here, such a consistent pattern emerges. Furthermore, the evidence in Figure 2 suggests that majority minority districts facilitate the election of African-American candidates.

[redacted]

A scatter plot depicting the correlation between the proportion of votes cast for the African-American candidate and the proportion of votes that were cast by Black North Carolina residents



Source: Data compiled from the FTP directory site of the North Carolina Board of Elections (ftp://www.app.sboe.state.nc.us/ENRS/).

Note: The correlation between these variables is both positive ($r = 0.4752$) and statistically significant ($p = 0.0008$). The scatter plot combines data from 2006, 2008, and 2010 election contests.

Table 1 Ecological Inference Analysis of Racial Polarization in Biracial US and North Carolina State Congressional District Election Contests of 2006

African-American Candidate	Election Contest	King's EI Estimates	
		Beta B (Blacks)	Beta W (Whites)
Vernon Robinson (R)	NC US Congressional District 13	0.8085	0.3644
Larry Shaw (D)	NC State Senate District 21	0.8324	0.5660
Tony Forlest (D)	NC State Senate District 24	0.8054	0.2762
Malcolm Graham (D)	NC State Senate District 40	0.8303	0.4890
Vernon Malone (D)	NC State Senate District 24	0.7177	0.3437
Howard Hunter (D)	NC State House District 5	0.8269	0.5882
William L. Wainwright (D)	NC State House District 12	0.8097	0.6301
Kever M. Clark (D)	NC State House District 14	0.8268	0.4951
Carnell Taylor (D)	NC State House District 25	0.8264	0.4867
Linda Coleman (D)	NC State House District 39	0.8372	0.6294
Earl Jones (D)	NC State House District 60	0.8045	0.3373
Jim H. Bentlon, Sr. (D)	NC State House District 69	0.8168	0.3930

Source: Data compiled from the FTP directory site of the North Carolina Board of Elections (ftp://www.app.sbe.state.nc.us/ENRS/).

Note: Estimates are simulated values using Gary King's programming package for estimating individual-level behavior from aggregate-level information (for details, see King 1997). "Beta B" indicates the proportion of African-American voting support for the Black candidate listed to the left hand side of the table. "Beta W" on the other hand, is the estimate of non-Black support for this candidate. Both estimates can be interpreted as proportions.

Table 2 Ecological Inference Analysis of Racial Polarization in Biracial US and North Carolina State Congressional District Election Contests of 2008

African-American Candidate	Election Contest	King's EI Estimates	
		Beta B (Blacks)	Beta W (Whites)
Mel Watt (D)	NC US Congressional District 12	0.8875	0.5106
Donald ("Don") Davis (D)	NC State Senate District 5	0.8932	0.7890
Vernon Malone (D)	NC State Senate District 14	0.8838	0.3270
Floyd B. McKissick, Jr. (D)	NC State Senate District 20	0.8824	0.6701
Anthony (Tony) Foriest (D)	NC State Senate District 24	0.8816	0.7324
Charlie Dannelly (D)	NC State Senate District 38	0.8792	0.2964
Malcolm Graham (D)	NC State Senate District 40	0.8948	0.5031
William L. Wainwright (D)	NC State House District 12	0.8857	0.6362
Larry D. Hall (D)	NC State House District 29	0.8915	0.3312
Dan Blue (D)	NC State House District 33	0.8872	0.5121
Linda Coleman (D)	NC State House District 39	0.8907	0.5033
Ty Harrell (D)	NC State House District 41	0.8965	0.7574
Betty Mangum (D)*	NC State House District 52	0.8773	0.4550
Celo Faucette (R)	NC State House District 63	0.8964	0.6652
Larry Womble (D)	NC State House District 71	0.8837	0.7140
Ada M. Fisher (R)	NC State House District 77	0.8977	0.6699
Kelly Alexander (D)	NC State House District 107	0.8851	0.4533
Pearl Burris Floyd (R)	NC State House District 110	0.8878	0.5621

Source: Data compiled from the FTP directory site of the North Carolina Board of Elections (ftp://www.app.sboe.state.nc.us/ENRS/)

Note: Estimates are simulated values using Gary King's programming package for estimating individual-level behavior from aggregate-level information (for details, see King 1997). "Beta B" indicates the proportion of African-American voting support for the Black candidate listed to the left hand side of the table. "Beta W" on the other hand, is the estimate of non-Black support for this candidate. Both estimates can be interpreted as proportions. The candidate with an asterisk (*) is an American Indian candidate; despite not being an African-American, this candidate receives similar levels of support from Black voters.

Table 3 Ecological Inference Analysis of Racial Polarization in Biracial US and North Carolina State Congressional District Election Contests of 2010

African-American Candidate	Election Contest	King's EI Estimates	
		Beta B (Blacks)	Beta W (Whites)
G. K. Butterfield (D)	NC US Congressional District 1	0.9226	0.5906
Mel Watt (D)	NC US Congressional District 12	0.9187	0.5584
William (Bill) Randall (R)	NC US Congressional District 13	0.9224	0.3064
Edward (Ed) Jones (D)	NC State Senate District 4	0.9244	0.6160
Don Davis (D)	NC State Senate District 5	0.9249	0.7153
Dan Blue (D)	NC State Senate District 14	0.9204	0.6037
Floyd B. McKissick, Jr. (D)	NC State Senate District 20	0.9246	0.6934
Eric L. Mansfield (D)	NC State Senate District 21	0.9242	0.7132
Tony Forlest (D)	NC State Senate District 24	0.9235	0.5131
Gladys A. Robinson (D)	NC State Senate District 28	0.9225	0.5522
C. Morgan Edwards(R)	NC State Senate District 37	0.9250	0.5547
Malcolm Graham (D)	NC State Senate District 40	0.9228	0.5366
William L. Wainwright (D)	NC State House District 12	0.9256	0.4137
Larry M. Bell (D)	NC State House District 21	0.9188	0.6188
Jean Farmer-Butterfield (D)	NC State House District 24	0.9224	0.5901
H.M. (Mickey) Michaux (D)	NC State House District 31	0.9229	0.6153
Rosa U. Gill (D)	NC State House District 33	0.9207	0.3990
Garland E. Pierce (D)	NC State House District 48	0.9230	0.2274
Alma Adams (D)	NC State House District 58	0.9207	0.4502
Marcus Brandon (D)	NC State House District 60	0.9249	0.5931
Earline W. Parmon (D)	NC State House District 72	0.9247	0.4855
Beverly Miller Earle (D)	NC State House District 101	0.9244	0.4014
Kelly Alexander (D)	NC State House District 107	0.9245	0.7232

Source: Data compiled from the FTP directory site of the North Carolina Board of Elections (ftp://www.app.sboe.state.nc.us/ENRS/).

Note: Estimates are simulated values using Gary King's programming package for estimating individual-level behavior from aggregate-level information (for details, see King 1997). "Beta B" indicates the proportion of African-American voting support for the Black candidate listed to the left hand side of the table. "Beta W" on the other hand, is the estimate of non-Black support for this candidate. Both estimates can be interpreted as proportions.

Figure 2 Bar charts showing that the proportion of Black candidates who win elections is noticeably higher in majority minority districts than in non-majority-minority districts



Source: Data compiled from the FTP directory site of the North Carolina Board of Elections (ftp://www.app.sboe.state.nc.us/ENRS/).

Note: Estimates represent raw counts of electoral victories (i.e., instances in which the African-American candidate earned more votes than the non-Black candidate in a given election) sorted by whether the election contest took place in a district that was "majority minority" in 2000 or 2010. The bars in this chart combine data from 2006, 2008, and 2010 elections.

Curriculum Vita
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Education

- Ph.D., The Ohio State University, 2006.
  Major: American Politics
  Dissertation Title: "Racial Cleavages in Political Interest"
- M.A., Political Science, The Ohio State University, June 2002
- B.A., Philosophy; B.A. Political Science, Howard University, May 1999

Professional Positions

- Assistant Professor, Political Science/Public Administration, University of Wisconsin-La Crosse, 2010-Present
- Assistant Professor, Department of Political Science, Florida State University, 2006-2010
- Adjunct Professor, Department of Political Science, Middle Tennessee State University, 2005-2006
- Instructor, Department of Political Science, The Ohio State University, 2002-2005

Teaching Experience

University of Wisconsin-La Crosse

- POL - Political Science and Public Administration 101, American National Government, 1 course
- POL - Political Science and Public Administration 301, American Presidency, 1 course
- POL - Political Science and Public Administration 302, Legislative Process, I course
- POL - Political Science and Public Administration 361, Research Methods in Politics and Government, 2 courses

Teaching Honors and Awards:

- Block Jr., Ray, "Wisconsin Teaching Fellows and Scholars (WTFS) Program", $5,352.00 (May 31, 2011 - May 1, 2012).

Teaching Presentations:

- An Authentic and Interactive Program for Writing Emphasis Courses. Presented at the

"Confluence of

- Four ("C4") Working Group Meeting (10/1/2k10)

Research/Published intellectual Contributions

Journal Articles:

- Block Jr., Ray. 2011. "Backing Barack Because He's Black: Racially-Motivated Voting in the 2008 Presidential Election" *Social Science Quarterly* 92(June): 434 456.
- Block Jr., Ray. Forthcoming (2011). "What about Disillusionment? Exploring the Determinants of Black Nationalism." *Political Behavior* 33 (March): 27 — 51.
- Block Jr., Ray and Chinonye Onwunli. 2010. "Managing Monikers: The Role of Name Presentation in the 2008 Presidential Election." *Presidential Studies Quarterly* 40 (September): 464 — 481.

Book Chapters:

- Block Jr., Ray. 2010. "Some Like it Hot: Toward A Political Climate Explanation of Racial Differences in Political Interest." In *African-American Political Psychology: Identity, Opinion, and Action in the Post-Civil Rights Era,* eds. Tas ha Philpot and Ismail K. White. New York, NY; Palgrave Macmillan.

Encyclopedia Entries:

- Block *Jr.,* Ray. 2007. "Urban Polities." In *International Encyclopedia of the Social Sciences, Second Edition.* Farmington Hills, MI: Thomson Gale.

Book Reviews:

- Block Jr., Ray. 2011. Book review of The Obama Victory: How Media, Money and Message Shaped the 2008 Election, by Kate Kenski, Burce W. Hardy, and Kathleen Hall Jamieson. Forthcoming in spring/summer issue of *American Review of Politics.*
- McClerking, Harwood K. and Ray Block Jr. 2005. Book review of The New White Nationalism in America: Its Challenge to Integration, by Carol M. Swain. *National Political Science Review 10:* 205-207.

Other, Non-Peer-Reviewed Manuscripts:

- Block Jr., Ray. 2009. "History Voters and their Role in the 2008 Presidential Election." *Verj Magazine,* January.
- Block Jr., Ray. 2007. "'Usually, But Not Always': A Report on the Race Gap in Political Interest, 1952 - 2004." *The Crisis* 114 (January/February): 13-17.

Research Presentations

- The Obama Synthesis Project: Mastering the Literature on Obama's Candidacy and Presidency. Talk to be delivered on October 15, 2010 at the "Polities o Race, Ethnicity, and Immigration Consortium" (PREIC) conference at the University of New Mexico in Albuquerque, NM.

Contracts, Grants, and Sponsored Research

- Block Jr., Ray, "CLS Small Grant", $3,350.00. (February 15, 2011 - September 9, 2011).

Departmental, College, Community, and Professional Service

Department Service

- CLS General Education Assessment, Member. (September 30, 2010 - Present).
- Political Science and Public Administration Search and Screen Committee, Member. (August 30, 2010 - Present).

College Service

- The "Confluence of Four" (C4) Working Group, Co-Founder. (August 17, 2010 - Present).
- CLS Graduate School Night, Department Representative. (October 6, 20I0).

University Service - Administrative Assignments

- Upward Bound search and screen committee member. (December 6, 2010 - April 1, 2011),

Community Service Presentations

- Block Jr., R. (Co-Presenter), Medinger, J. (Co-Presenter), "The ABC's of Redistricting", La Crosse Public Library, League of Women Voters, (February 23, 2011).

General Professional Service

- Professional, National Conference of Black Political Science, Task Force Member, Panelist, approximately 10 hours spent for the year, No, neither, Pro Bono, National. (March 16, 20I1 - March 20, 2011).

Editorial and Review Activities

- Ad Hoc Reviewer, Papers, "Politicized Ethnicity and Electoral Campaigns in New York," Annual

Review of Political and Military Sociology, 1 review, (December 21, 2010 - January 31, 2011).

- Ad Hoc Reviewer, Papers, "Uncle Torn: Race, Law, and Culture," Cambridge University Press (New York), 3 reviews. (September 28, 2010 - October 28, 2010).
- Ad Hoc Reviewer, Papers, "Achieving Validation: Barak Obama and Black Turnout in 2008," Political Behavior, 1 review. (August 23, 2010 - September 26, 2010). Westlaw.

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Reports

*577 VOTING RIGHTS IN NORTH CAROLINA: 1982-2006

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INTRODUCTION TO THE VOTING RIGHTS ACT

North Carolina's experience since the reauthorization of the Voting Rights Act in 1982 has been a mixed one of slow progress, setbacks and new challenges. Only forty of the state's one hundred counties are covered by Section 5 of the Act, [FN1] resulting in greater protections for some areas of the state. While many of the gains In minority representation at all levels have come about as the result of litigation under Section 2, Section 5 arguably has had the greatest impact in the state because numerous objections have prevented the implementation of election changes that would have made it harder for black voters to participate in elections. Indeed, the ability of Section 5 preclearance to protect and, thereby, reinforce Section 2 gains has been an important part of the minority voting rights story in North Carolina.

Of the counties that are covered, most are rural counties in the eastern part of the state. [FN2] Indeed, North Carolina's two largest cities, Charlotte and Raleigh, [FN3] are not among the covered counties. [FN4] Durham and Winston-Salem also are not covered. [FN5] Thus, it is remarkable that although so

few of the state's citizens are covered by Section 5, there have been forty-five objection letters issued since 1982 relating to an even greater number of changes in voting practices and procedures. [FN6] Of those forty-five objection *578 letters, ten involved multi-county or statewide changes, Including state redistricting plans, changes relating to the election of judges and proposed delays in implementing mail-in registration procedures. [FN7]

There are ten instances of North Carolina Section 5 submissions being withdrawn from consideration since 1982–five of them since 2000. [FN8] This is a strong indication of the beneficial effect of Section 5 review, short of the Department of Justice issuing a formal objection. In at least one instance, the submission related to subsequent attempts by a local jurisdiction to modify an election method that had been put in place following litigation under Section 2, [FN9]. The Department of Justice, by raising questions about the proposed change, was able to prevent the dismantling of a system that gave minority voters an opportunity to elect candidates of their choice, thus preserving the gains obtained through earlier litigation without the need for the original plaintiffs to return to court, [FN10]

It also Is clear from recent testimony by local activists that election officials in covered jurisdictions do consult with representatives of the local NAACP or other African-American leaders in the community before changing polling places or making other election-related changes, [FN11] Motivated by the fact that any change will be reviewed in Washington, local officials are more conscious of the impact that such changes may have on the ability of black voters to participate in elections. Although prior to 1982 there

was significant non-compliance with Section S's preclearance requirement, [FN12] local election officials in the covered counties are now generally in favor of keeping the process in place. [FN13]

*579 There has been extensive voting rights litigation since 1982. [FN14] In recent years, significant state court litigation has examined the interaction between state constitutional provisions, Sections 2 and 5 of the Voting Rights Act and their implications for minority voting rights. [FN15] North Carolina has the dubious distinction of being the state that produced both the *Thornburg v. Gingles* [FN16] decision in 1986, which held that the state legislature un-lawfully diluted the voting strength of minority voters in its legislative redistricting plan following the 1980 census, and the *Shaw v. Reno* [FN17] litigation in the mid-1990s, which held that the state legislature violated the equal protection rights of white voters by creating non-compact majority-minority congressional districts. There continues to be considerable controversy over redistricting, voter registration, provisional balloting and minority voter intimidation–all in a state where racially polarized voting has not significantly decreased since the *Gingles* decision.

Before examining the details of Section 5 objections since 1982, Section 2 litigation and the barriers that African-American and Latino voters in North Carolina continue to face, it is important to review the history of discrimination in voting in this state and to understand the current socio-economic factors that create the context for current minority political participation.

I. DISCRIMINATION IN VOTING IN NORTH CAROLINA [FN18]

A. Prior to 1982

Even after enactment of the Fifteenth Amendment to the Constitution in 1870, which gave all men, regardless of race, color or previous condition of servitude, the right to vote, many states continued to use various methods to prevent people of color from voting, including literacy tests, poll taxes, the disenfranchisement of former inmates, intimidation, threats and even physical violence. [FN19] In North Carolina, African-American political *580 activity was suppressed at every level. [FN20] Only 15% of North Carolina's African-Americans were registered to vote in 1948, and only 36% were registered in 1963. [FN21] it was virtually unheard offer an African-American to attempt to nut for political office. [FN22] In fact, no African-American person was elected to the North Carolina General Assembly from 1900 until 1968. [FN23]

In 1965, Congress passed the Voting Rights Act (VRA). [FN24] The VRA primarily protected the right to vote as guaranteed by the Fifteenth Amendment, but it was also designed to enforce the Fourteenth. Amendment and Article I, Section 4 of the Constitution. [FN25] The VRA succeeded in removing some of the direct and indirect barriers to voting for African-Americans. In fact, after enactment of the VRA, African-American voter registration in North Carolina readied 50%. [FN26]

Prior to 1982, the VRA was amended three times. The 1970 amendments instituted a nationwide, five-year ban on the use of tests and devices as prerequisites to voting, [FN27] In 1974, the first two black

State Senators, John W. Winters and Fred Alexander, were elected. [FN28] In 1975, the ban on literacy tests was made permanent and the coverage of the act was broadened to include members of language minority groups. [FN29] In 1980, African-American voter registration in North Carolina was 52%, and by 1990, the statewide proportion of eligible blacks registered was 63%. [FN30]

*581 B. 1982 to the Present

The 1982 VRA amendments made it clear that proof of intent to discriminate was not required for a claim under the Act. [FN31] These amendments were necessary to strengthen and improve the VRA, but they did not immediately result in greater rates of African-American voter registration In North Carolina. [FN32] In 1986, only 57.1% of eligible African-American voters were registered to vote. [FN33]

In 1786, in *Thornburg v. Gingles*, [FN34] the Supreme Court upheld the constitutionality of the new Section 2 language. In this landmark decision, the Court affirmed the district court's conclusion that

> North Carolina had officially discriminated against its black citizens with respect to their exercise of the voting franchise from approximately 1900 to 1770 by employing at different times a poll tax, a literacy test, a prohibition against bullet (single-shot) voting and designated scat plans for multimember districts, The court observed that even after the removal of direct barriers to black voter registration, such as the poll tax and literacy test, black voter registration remained relatively depressed; in 1982 only 52.7% of age-qualified blacks statewide

were registered to vote, whereas 66.7% of whites were registered. [FN35]

In 1989, the number of blacks in the State Legislature increased to nineteen– at that time, the highest number of black legislators in the state's history. [FN36] Subsequently, the number of black elected officials continued to grow. [FN37] Currently, there are twenty-five black legislators—seven Senators and eighteen Representatives—representing 14% of 170 members of the General Assembly. [FN38] The average (mean) representation over all sessions is fifteen black members, or 8%.

*582 C, Current socio-economic Factors Affecting the Ability of African-Americans to Vote

The VRA, when taken in tandem with the broader social and economic experiences of black voters, has been insufficient to remedy all the effects of voting discrimination. [FN39] Despite the VRA, black voters are still experiencing the socio-economic consequences of past discrimination that critically Impede their political participation. [FN40]

Today, blacks comprise more than 21.5% of North Carolina's total population. [FN41] The 2000 Census counted 1,737,545 residents of North Carolina wire reported their race as black alone and another nearly 35,000 who reported black. In combination with another race. [FN42] The black population of North Carolina lies increased by approximately 18% since 1990. [FN43]

Although the population of blacks is growing, the percentage of black families living below the federal poverty level ($17,603 animal income for a family of four) in 1999 was 22.9%, compared to 8,4% for whites. [FN44] Approximately 29% of black families were

headed by females, compared to 7.5% for white families, [FN45] Thirty-five percent of the families headed by black females lived in poverty. [FN46]

Even more disturbing is the fact that more than 60% of black adults age twenty-five and older had a high school education or less, compared to 47% for whites. [FN47] Furthermore, the unemployment rate for blacks was 2.6 times that of whites (10.3% versus 3.8% in 2000), 1.4: leaving 19% of blacks *583 with no current health insurance and five times more likely than whites to use Medicaid. [FN49]

In sum, low income, low education levels and high unemployment are all factors associated with blacks in North Carolina. Moreover, those same factors are associated with a higher rate of health problems, ranging from mental disorders to physical aliments. [FN50] In fact, the Infant death rate among black North Carolinians is more than double the rate for whites. [FN51] All of these factors hinder the ability of blacks to participate in political activities.

II. SECTIONS OBJECTIONS, 1982-PRESENT

Four decades after its enactment, Section 5 of the Voting Rights Act remains one of the primary mechanisms for ensuring minority voters access to the political process. In North Carolina, Section 5 has prevented the implementation of numerous voting systems that would have diminished minority voters' ability to elect candidates of their choice. Section 5 also has guaranteed that after minority voters successfully bring Section 2 suits, cities and counties design systems that actually improve opportunities for minority residents to participate in the political process. Department of Justice Section 5 objection letters

show that during the past two decades, voters in North Carolina's forty covered counties have relied on the preclearance provision to protect their right to vote in local, county and statewide elections.

Enforcement of Section 5 has continued to prevent the Implementation of numerous election systems that would have cut minority voters out of the political process. Examples of dilutive practices that Section 5 has protected against include staggered terms, residency requirements, annexation of predominately white areas, majority vote and runoff requirements, unfair drawing of districts and maintenance of at-large voting. [FN52] Residency requirements—systems under which the entire county or city votes for each seat, but the candidate is required to reside in a particular area–have been especially common proposals used in this state to weaken black voting *584 strength. [FN53] Such requirements limit minority voters' ability to use single-shot voting to elect candidates of their choice. [FN54] In the six-year period from 1982 through 1987, Section 5 enabled the Attorney General to interpose objections to residency districts in the counties of Beaufort, Bertie, Camden, Edgecombe, Guilford, Martin, Onslow and Pitt. [FN55]

Section 5 also has forced county and local officials to implement fair voting systems in response to Section 2 suits. In Pasquotank County, for example, after black voters and the NAACP filed suit opposing Elizabeth City's at-large method, of election, the city agreed in a consent decree to implement single-member districts. [FN56]

Ultimately, however, the city adopted a plan with four single-member districts and four at-large residency districts. [FN57] The plaintiffs to the suit

opposed continued use of such extensive at-large voting because it unnecessarily diluted black voting strength, [FN58] When the city applied for preclearance, the Attorney General interposed an objection, explaining that the oily had chosen a plan that would elect half the governing body "in a manner identical to that which the decree was designed to eliminate." [FN59] Though the use of limited at-large voting might be acceptable, the plan chosen contained "the very features that characterized the plan abandoned by the consent decree" and was adopted over readily available alternatives that would allow some at-large representation without "unnecessarily limiting the potential for blacks to elect representatives of their choice to office." [FN60] The plan was, in fact, enacted "with knowledge of the disparate impact' that It would have. [FN61] Elizabeth City has since adopted an election scheme with four wards that each elect two council members. [FN62] There are currently four black members on the council, [FN62] In the case of Elizabeth City and elsewhere, Section S has *585 provided a long-term guarantee that the promises made in Section 2 suits actually are implemented.

In 1987, the Department of Justice acted under Section 5 to stop the Pitt County Board of Commissioners from implementing a plan "calculated to minimize minority voting strength." [FN64] That same year, Section S enabled the Attorney General to halt the execution of changes to the method of electing the Haden County Board of Commissioners, after finding the Board had taken "extraordinary measures to adopt an election plan which minimizes minority voting strength." [FN65]

As the above summaries of letters of objection from the Attorney General demonstrate, Section 5 has been

repeatedly used in North Carolina to combat invidious discrimination. Absent this protection, minority voters would have been repeatedly denied the opportunity to participate in elections, and the promises of the Voting Rights Act would not have been fulfilled.

III. VOTING RIGHTS ACT CASES, 1982-PRESENT

North Carolina has been a major testing ground for the Voting Rights Act. With a history of racial segregation and violence, the state suffered well into the twentieth century from low rates of minority voter registration, and it continues to endure voter Intimidation and election schemes that effectively disenfranchise black voters. Since Its inception in 1965, and especially since it was amended in 1982, the Voting Rights Act has been an effective tool for black voters to overturn election systems that dilute minority voter strength and prevent election of representatives of their choice.

Both Section 5 and Section 2 have been used by individual black voters, the Attorney General and minority advocacy groups, including the NAACP, to halt or reverse the implementation of discriminatory, undemocratic voting systems. [FN66] Section 5 has been important in shaping both statewide election systems and local elections in the forty covered counties. Section 2 has enabled black voters to win suits by proving the existence of dilutive voting systems, and even more Important, it has formed the basis for dozens of consent decrees, whereby election officials and black voters *586 agreed to change the voting system to provide minority voters a meaningful opportunity to elect Their preferred candidates. [FN67]

Individual voters have used Section 5 to ensure that they have a voice in statewide and local elections. The pre-clearance requirement also has enabled the Attorney General to interpose objections to changes In voting processes that would weaken minority voting strength, For 'example, plaintiffs have filed several suits related to the whole county provision of the North Carolina Constitution, which provides that no county can be divided in the formation of a Senate or Representative district. [FN68] If implemented strictly, this provision could have serious consequences for black voters in areas where voting countywide would dilute their voting strength. Upon review, the Department of Justice, therefore, disallowed use of the whole county criterion where following it would result in the failure to comply with the Voting Rights Act, and courts have affirmed that result. [FN69] Section 5 also has been used by black voters to obtain an Injunction to prevent state election officials from changing the procedure for electing superior court judges without obtaining preclearance for covered counties. [FN70].

At the local level, Section 5 has prevented counties and cities from changing their voting systems to dilute black voter strength. In United States v. Onslow County, the court stopped elections under a voting system that had been changed in 1969, but was never precleared. [FN71] The court agreed with the, Attorney General that the use of staggered terms would deny black voters an equal opportunity to elect candidates of thei choice, and it ordered the county to hold elections for all five seats on the board of commissioners. [FN72]The county wanted to hold elections for only two of the seats whose members' terms would normally expire by the next election, but the court found that because the staggered terms

"deprived black voters of their best opportunity to elect a commissioner of their choice," it could not allow those elected under the unfair system to stay in office or "that *587 evil would not be corrected." [FN73] The suit ended with the removal of the unlawful voting system. [FN74]

While Section 5 has helped prevent the enactment of dilutive voting systems, Seaton 2 has enabled black voters to remedy problematic voting systems already In place, North Carolina provided the first major test case for the Supreme Court on the 1982 amendments to Section 2, which made clear that a showing of purpose to dilute black voting strength was not required. [FN75] In *Thornburg v. Gingles*, the Court articulated a test by which Section 2 claims would be evaluated. [FN76] This test has since been used to evaluate voter dilution claims in North Carolina and nationwide and has provided black voters with a moans of effecting change.

In North Carolina, the significance of Section 2 is clear. In Halifax County, a change in the voting system allowed voters to elect the first Mack county commissioners of the twentieth century. [FN77] in Vance County, a Section 2 suit resulted in the first ever election of a black woman to the county board of commissioners. [FN78] In the Town of Benson, with a population that was over 32% black, a consent decree entered in a Section 2 suit enabled black voters to elect the first black town commissioner, [FN79] These cases are not aberrations, but rather, are generally representative of the outcomes of Section 2 cases.

Since the 1982 amendments, black voters have had regular success in bringing Section 2 suits. The majority of those suits have been voluntarily terminated when the parties reached an agreement to

change the voting system. [FN80] The most common solutions adopted in consent decrees are the removal of staggered terms and the creation of voting districts, both of which limit the effects of white [illegible] voting and increase black voters' opportunity to elect preferred candidates. [FN81] Other changes have included the elimination*588 of run-off elections and the establishment of longer terms to reduce the resource strain of frequent elections. [FN82]

As a number of cases demonstrate, [FN83] the Voting Rights Act unquestionably has benefited black voters in North Caroline. Even in counties where black citizens comprise nearly half the population, black voters have relied on Section 2 and Section 5 to remedy the systemic denial of voting rights. And yet, the work of the Voting Rights Act remains incomplete. In Onslow County, for example, where staggered elections were halted, the at-large method of voting still prevents black voters from electing preferred candidates. [FN84] No black individual currently sits on the board of commissioners. [FN85] In Cumberland County, black voters were successful in bringing a Section 2 suit to change the method of election from at-large to a mixed district/at-large system, but could not obtain a pure district system, as they had hoped. [FN86] *As* the plaintiffs anticipated, black candidates have been successful in black majority districts, but the at-large seats are occupied only by white members. [FN87]

In North Carolina, the Voting Rights Act continues to be necessary as a means for black voters to achieve equal opportunity in voting, and in those areas where greater equality has been obtained, to prevent a rollback of such advances.

IV. CURRENT BARRIERS TO EFFECTIVE POLITICAL PARTICIPATION BY MINORITY VOTERS

Current problems facing minority voters in North Carolina range from allegations of voter intimidation to a lack of assistance for disabled voters. [FN88] Research surrounding the 2000 elections documented a multitude of problems, such as poor voting equipment, confining ballots, elimination of voters' names from voter registration lists, intimidation of voters at the polls and overall lack of funding for boards of elections, many of which *589 disproportionately affect minority voters. [FN89] These problems continue to plague the state's elections, In 2002, North Carolina did not count 3.3% of its votes as a result of several problems, including the refusal of some polling officials to provide challenged voters with provisional ballots and the purging of names of voters who had not voted since 1998 from registration rolls. [FN90] Other documented problems have included ex-felons receiving incorrect Information about their right to vote and polling sites being moved without sufficient notice. [FN91]

Such voting irregularities generally affect black voters in greater percentages than white voters. [FN92]. Today, despite the VRA, it is still difficult for black citizens to register, vote and elect candidates of their choice. [FN93] In North Carolina, black voters also report voter intimidation at an alarming rate. [FN94] Voter intimidation is not a relic of the past, but rather, a strategy used with disturbing frequency in recent years. One stark illustration occurred in the context of the hotly contested Jesse Helms-Harvey Gantt U.S. Senate race, which involved the first black senatorial candidate with a realistic chance of success.

[FN95] In 1990, on the eve of the general election, 125,000 black voters were mailed postcards headed "Voter Registration Bulletin" that incorrectly stated that they could not vote if they had moved within thirty days of the election. [FN96] As a result, many black voters were confused about whether they could vote. [FN97] The Department of Justice obtained*590 a consent judgment banning the practice in United States v. North Carolina Republican Party. [FN98]

Black voters are not the only minority group to be targeted for intimidation campaigns. In the weeks leading up to the November 2004 general election, the sheriff of Alamance County publicly announced that he would be sending deputies to the homes of every new registrant with a Hispanic surname in the county to inquire whether they were citizens. [FN99] Sheriff Terry Johnson contend[ed] that illegal residents are registering at Division of Motor Vehicle offices when they obtain driver's licenses or other forms of identification." [FN100] Sheriff Johnson and the County Attorney obtained a list of 125 Hispanics registered to vote in the county, thirty-eight of which were confirmed to be in the country legally. [FN101] He assumed that the remaining voters were either using false names or in the country illegally. [FN102] Latino advocates were outraged because Sheriff Johnson's actions were making Latino citizens fearful of being harassed if they tried to vote.

There also were numerous problems documented during the 2004 general election, including the exclusion of voters' names from the rolls of precincts where they had properly registered and voters' inability to find proper polling places due to insufficient notice and signage. [FN103] Significant problems also arose with provisional ballots and

absentee ballots, [FN104] Alarmingly, reports from across the state recounted voter intimidation and lack of assistance for handicapped voters. [FN105]

One example of the type of barrier encountered by black voters in the state involved a 2004 incident at North Carolina Central University (NCCU). Student leaders at NCCU in Durham decided that a march to an early voting polling place would be a good way to honor and inspire their community. [FN106] "Marching is unique in the African American tradition," said D'Weston Haywood, an NCCU senior and president of NCCU's Student*591 Government Association. "We thought it would be special and symbolic if we marched to the polls to cast our votes." [FN107]

The NCCU student leaders worked diligently to plan and prepare for the march. [FN108] The students contacted the board of elections on several occasions to give them notice of the march. [FN109] The students also requested that the board utilize extra staff to assist with the expected crowd of eager, young voters. [FN110]

The October 14 march drew approximately 1500 students, faculty and citizens who walked two miles from NCCU's campus to an early voting site at Hillside High School, [FN111] When the students arrived at the site, they waited for hours in long lines of over one hundred voters. [FN112] Despite NCCU's notice, the board of elections clearly made no attempt to prepare for this crowd and, as a result, hundreds of voters were deterred from voting. [FN113]

The action, or more appropriately, inaction, of the board of elections is unexplainable. Indeed, there was plenty of time for preparation and planning.

Furthermore, even if adding more staff and other reasonable preparation was not feasible, the board of elections could have easily warned or informed the student leaders. As it turned out, hundreds of students spent hours trying to cast their vote, and many never cast a vote at all. [FN114] This was discouraging, and even demoralizing, for the students and the leaders. As one student said, the issues at the polls In Durham "turn[ed] them from voting and... le[ft] an Impression, And you get to the point where, how can we tell students to get involved when we're having so many issues." [FN115]

Another example of barriers to voting encountered by black voters occurred in 2002 and resulted in the Duplin County Board of Elections staff being removed, following a number of allegations of fraudulent and criminal behavior. [FN116] The allegations included altered signatures, unauthorized *592 voter address changes and voter intimidation at the polls. [FN117] For example, Jim Grant of Ponder County reported the constant patrolling of a deputy sheriffs car during the early voting day in a primarily black neighborhood. [FN118] The car reportedly patrolled "back and forth in front of the polling place in an effort, I would assume, to try to intimidate people," [FN119]

Additionally, Bobbie Taylor, president of the Caswell Count Branch of the NAACP, reported incidents "where . . . on election day, the candidates—workers for the whites have been permitted to put up their tables, their tents, and whatever closer to the entrance of a polling place than we were allowed to," [FN120] In fact, as Taylor recounted, blacks were asked to move further away from the polling place. [FN121] Black voters also were spoken to rudely, and

their questions were routinely dismissed. [FN122]

In another example, Reverend Savalas Squires testified at the public hearing held in Greensboro that Davie County had experienced problems with voter intimidation. [F1123] He recounted how black youth at Davie High School were given false information regarding when they could cast their vote. [FN124] Finally, in Forsyth County, Hack voters experienced problems with provisional ballots and long lines due to complications regarding voting machines. [FN125]

V. CONCLUSION

Section 5 has been an extremely effective measure to prevent the Implementation of changes in voting practices and procedures that would unfairly disadvantage minority voters. It has served as a safety net to ensure that when plaintiffs are successful in Section 2 litigation and obtain court orders changing the method of election, new redistricting plans are not adopted following the next Census or, in the case of cities, following a substantial annexation, that essentially negate the hard-won gains from litigation. Effective implementation of the preclearance requirement has made local jurisdictions more sensitive to the Impact of proposed changes on minority voters. The North Carolina experience demonstrates the powerful deterrent effect of Section 5. At this time, the failure to reauthorize the expiring*593 provisions Of the Voting Rights Act would have devastating consequences for this state's minority voters.

[FNa1] Center for Civil Rights, University of North Carolina School of Law.

[FN1]. 28 C.F.R. 51 app. (2007).

[FN2]. See id.

[FN3]. See US. Census Bureau, 2000 Census Summary File 1, at tbl.P1, available at http://factfindercensus.gov (last visited Feb, 15, 2008).

[FN4]. See 28 C,F.R. 51 app.

[FN5]. See id.

[FN6]. See Department of Justice, Section 5 Objection Determinations: North Carolina, http;//www.usdoj.gov/crt/voting/sec_5/no_obj2.htm (last visited Feb. 15, 2008). The Department of Justice listing contains a detailed summary of each objection. One objection letter may relate to several changes that were contained in a single submission,

[FN7]. See id.

[FN8]. See Appendix A for a list of submissions from North Carolina that have been withdrawn and the date they were withdrawn.

[FN9]. See Appendix A (Submission No. 2001-4063).

[FN10]. Sec id. For prior litigation, see *Moore v. Beaufort County*, 936 F,2d 159 (46 Cir. 1991.).

[FN11]. Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, North Carolina A&T University, Greensboro, North Carolina, 41-42 (Nov. 14, 2005) [hereinafter Greensboro Hearing] (testimony of Bobbie Taylor of Yanceyville, North Carolina) (transcript on Ale with the Center for Civil Rights, University of North Carolina School of Law).[FN12]

[FN12]. See William R. Keech & Michael P. Sistrom, North Carolina, in Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990 155, 162 (Chandler Davidson & Bernard Grofman eds., 1994).

[FN13]. *See* The Voting Rights Act: Section 5 of the Act–History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 109th Cong. 3149 (2005) [hereinafter Hearing] (statement of Anita Earls, Director of Advocacy, UNC Center for Civil Rights).

[FN14]. See Appendix B for detailed mummeries of all federal court voting rights litigation in North Carolina since 1982.

[FN15]. See, e.g., *Fender County v. Bartlett*. 649 S.E.2d 364 (N.C. 2007); *Stephenson v. Bartlett*, 582 S.E.2d 247 (N.C. 2003).

[FN16]. 478 U.S. 30 (1986).

[FN17]. 509 U.S. 630 (1993).

[FN18]. For a more extensive review of pre- and post-1982 problems and incidents of discrimination in North Carolina, see Hearing, supra note 13, 31.81-92 (statement of Anita Earls).

[FN19]. J. Morgan Kousser, A Century of Electoral Discrimination in North Carolina, in Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction 243, 245, 259 (1999).

[FN20]. Id.

[FN21]. Id. at 245.

[FN22]. Id.

[FN23]. Keech & Sistrom, supra note 12, at 166.

[FN24]. Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C, 6. 1971, 1973 to 1973bb-1 (2006)).

[FN25]. Richard A. Williamson, The 1982 Amendments to the Voting Rights Act: A Statutory

Analysis of the Revised Bailout Provisions, 62 Wash. U, L.Q. 1, 2 (1984) (citing H.R. Rep. No 89-439, at 6 (1965)).

[FN26]. Kousser, supra note 19, at 245.

[FN27]. Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, §§ 2-5, 84 Stat. 314, 315 (codified as amended at 42 U.S.C. 5 1973b (2006)).

[FN28]. N.C. Legislative Black Caucus, North-Carolina African American Legislators 1969-2005 (on Ole with authors).

[FN29]. See Voting Rights Act Amendments of 1975, Pub, L. No. 94-73, §§ 203, 206, 207, 89 Stat, 400, 401-02 (codified as amended at 42 U.S.C. §§ 1973(a), 1973b(f), 1973d, 1973k, 19731(c)(3) (2006)).

[FN30]. Keech & Sistrom, supra note 12, at 161.

[FN31]. See Voting Rights Act Amendments of 1982, pub. L. No. 97-205, § 3, 96 Stat. 131, 134 (codified as amended at 42 U.S.C. § 1973(a) (2006)).

[FN32]. Sec Kim Q. Hill & Jan E. Leighley, Racial Diversity, Voter Turnout, and Mobilizing Institutions in the United States, Am. Pol. Q., July 1999, at 275, 292.

[FN33]. *U.S.* Census Bureau, Voting and Registration in the Election of November 1986 27 tb1.4 (1987), available at http://www.census.gov/population/socdemo/voting/p20-414/tab04.pdf.

[FN34]. 478 U.S. 30 (1986).

[FN35]. Id, at 38-39,

[FN36]. N. C. Legislative Black Caucus, supra note 28.

[FN37]. See generally David A. Bositis, Joint Ctr. for Political & Econ. Studies, Black Elected Officials: A

Statistical Summary 2001 (2001), available at http: //www.jointcenter.org/pubilcations1/publication-PDFs/BE0-pdfs/2001-BEO.pdf.

[FN38]. Id. at 14 tbl.2.

[FN39]. See generally Kousser, supra note 19.

[FN40] See FairData2000, Selected Socio-Economic Data; North Carolina: African American and White, Not Hispanic (2000), http://www.fairdata2000.com/SF3/contrastcharts/Statewide/Black/North%20Carolina SF3_Black.pdf.

[FN41]. See U.S. Census Bureau, 2000 Census Summary File 1, at tbl.P3 available at http://factfinder.census.gov (last visited Feb. 15, 2008).

[FN42]. See Id.

[FN43]. See id; U.S. Census Bureau, 1990 Census Summary Fite 1, at tbl.P006, available at http://factfinder.census.gov (last visited Feb. 15, 2008).

[FN44]. Office of Minority Health & Health Disparities & State Ctr. for Health Statistics, N.C. Dept of Health and Human Servs., Racial and Ethnic Disparities in North Carolina; Report Card 2003 3 (2003), available at http://www.schs.state.nc.us/SCHS/pdf/FinalReportCard.pdf.

[FN45]. See FairData2000, supra note 40, at Chart 1.

[FN46], See U.S. Census Bureau, 2000 Census Summary File 3, at tbls.P146B, FMB, available at http://factfinder.census.gov (last visited Feb. 15, 2008).

[FN47]. See FairData2000, supra note 40, at Chart 3.

[FN48]. Id, at Chart 4.

[FN49]. See Office of Minority Health & Health Disparities & State Ctr. for Health Statistics, supra note 44, at 5.

[FN50]. See Ziya Gizlice & Emmanuel M. Ngul, Relationships Between Health and Perceived Unequal Treatment Based on Race: Results from the 2002 North Carolina MUSS Survey, SCHS Stud. Special Rep. (N.C. Dep't of Health & Human Servs., Raleigh, N.C.) Sept, 2004, at 1, available at http://www.schs.state.nc.us/SCHS/pdf/SCHS144.pdf.

[FN51]. Henry J. Kaiser Family Foundation, Infant Death Rate by Race/Ethnicity - North Carolina, http://www.statehealthfacts.org/profileind.jsp?ind=48&cat=2&rgn=35 (last visited Apr. 23, 2008).

[FN52], See Department of Justice, supra note 6.

[FN53]. See id,

[FN54]. E.g., Letter from William Bradford Reynolds, Assistant Attorney Gen., Civil Rights Div., Dept of Justice, to John W. Halstead, Jeannette, Morrison, Austin & Halstead, at 1 (Nov. 9, 1987) (on file with author).

[FN55]. Sea Department of Justice, aim note 6.

[FN56]. See *NAACP v. Elizabeth City*, No. 83-39-CIV-2 (E.D.N.C. 1984).

[FN57]. Letter from James E. Turner, Assistant Attorney Gen., Civil Rights Div., Dept of Justice, to M,H. Hood Ellis, Wilson & Ellis, at 1 (Mar. 10, 1986) (on file with author).

[FN58.], See id. at 2.

[FN59]. Id.

[FN60]. Id.

[FN61]. Id.

[FN62]. See *City of Elizabeth City*, Form of Government, http:// www.cityofec.com (select "City Government" hyperlink; then select "Form of Government" hyperlink) (last visited Feb. 15, 2008),

[FN63]. Race of Elizabeth City Council members determined based on personal knowledge of the authors, See also City of Elizabeth City, NC, http:// www.cityofec.com (last visited Apr. 23,,2008) (providing information on the current Elizabeth City Council and method of election).

[FN64]. Letter from William Bradford Reynolds, Assistant Attorney Gen., Civil Rights Div., Dep't of Justice, to Michael Crowell, Tharrington, Smith &Hargrove, at 2 (Dec. 29, 1987) [hereinafter Letter from Reynolds, Dec. 1987] (on file with authors).

[FN65]. Letter from William Bradford Reynolds, Assistant Attorney Gen., Civil Rights Div., Dept of Justice, to W. Leslie Johnson, Jr., Johnson & Johnson, at 3 (Nov. 2, 1987) [hereinafter Nov. 1987 Reynolds Letter] (on file with authors).

[FN66]. See Appendix B.

[FN67]. See id.

[FN68]. Cases brought tinder Section 5 related to the whole county provision include: *Bartlett v. Stephenson*. 535 U.S. 1301(2002) (refusing to issue a stay to applicant state election officials seeking to invalidate the holding by the North Carolina Supreme Court in *Stephenson v, Bartlett*, 562 S.E.2d 377 (N,C. 2002)); *Thornburg v. Gingles*. 478 U.S. 30 (1986); *Cavanagh v. Brock*, 577 F. Sum 176 (E.D.N.C. 1983); *Sample v. Jenkins*, No. 502-383 (E.D.N.C. filed June 6, 2002).

[FN69]. See supra note 68.

[FN70]. See *Haith v, Martin,* 618 F. Supp. 410 (E.D.N.C. 1985), aff'd, 477 U.S. 901 (1986).

[FN71]. 683 F, Supp. 1021 (E.D.N.C. 1988).

[FN72], Id. at I023-24.

[FN73]. Id, at 1023.

[FN74]. Id. at 1024.

[FN75]. See *Thornburg v. Gingles*, 478 U.S. 30.(1986).

[FN76]. Id. at 47-80.

[FN77]. See *Johnson v. Halifax County*, 594 F, Supp. 161 (E.D.N.C. 1984); see also *Halifax County Board of Commissioners*, http:// www.halifaxnc.com/board.cfm (last visited Apr. 23, 2008) (providing information on the current Halifax County Board of Commissioners).

[FN78]. See *Ellis v. Vance County*, No. 87-28-CIV-5 (E.D.N.C. 1987); see also *Vance County Board of Commissioners*, http://www.vancecounty.com/Comm issioners.htm (last visited Apr. 23, 2008) (providing information on the current Vance County Board of Commissioners).

[FN79]. See *Johnson v. Town of Benson*, No. 88-240-CIV-5 (E.D.N.C. 1988): see also Town of Benson, Benson's Town Commissioners, http:// www.townofbenson.com/government/commissioners.c fm (last visited Apr. 23, 2008) (providing Information on the current Town of Benson Commissioners).

[FN80]. See Appendix B.

[FN81]. See id.

[FN82]. See id.

[FN83]. Id.

[FN84]. See *United States v Onslow County*, 683 F.Supp. 1021 (E.D.N.C. 1988).

[FN85]. See Onslow County Board of Commissioners, http://www.co.onslow.nc.us/commissioners/default.aspx?id=3156 (last visited Apr. 23, 2008) (providing information on the current composition of the Onslow County Board of Commissioners).

[FN86]. See Fayetteville, *Cumberland County Black Democratic Caucus v. Cumberland County*, 927 F.2d 595 (4th Cir. 1991).

[FN87]. Cumberland County, Board of Commissioners, http://www.co.cumberland.nc.us/commissioners.asp (last visited Apr. 23, 2008) (providing information on the current Cumberland County Board of Commissioners).

[FN88]. UNC Ctr. for Civil Rights, Final Report: 2004 Election Protection North Carolina 7-8 (2005), available at http://www.law.unc.edu/documents/civilrights/briefs/epreport.pdf.

[FN89]. Democracy South, Voting Rights in the South, http://www.democracysouth.org/Improving/rights-disenfranchisement.html (last visited 2006); see also To Becker & Dan Keating, Problems Abound in Election System: Outmoded Machinery is Still Widespread, Wash. Post, Sept. 5, 2004, at A01.

[FN90]. Memorandum from Voter Task Force; Mecklenberg Voter Coal., Recommendations to Correct Irregularities and Confusion in the Voting Process in the November 2000 General Election (Mar. 28, 2001) (on file with authors).

[FN91], Melissa Siebert, Inst. for S. Studies, Voting Rights Project, Protecting the Integrity of North

Carolina's Elections: Top Ten Breakdowns and the Need for Election Protection 6 (2002),

[FN92]. Am. Civil Liberties Union, Reaffirmation or Requiem for the Voting Rights Act?, Public Policy Alert, May 1995, available at WO/ academic.udayton.edu/race/04needs/voting03a.htm.

[FN93]. Id.; see also U.S. Comm'n on Civil Rights, The Voting Rights Act: Ten Years After 330 (1975); Charles Cameron at al., Do Majority-Minority Districts Maximize Substantive Black Representation in Congress?, Am, Pol. Sci. Rev., Dec. 1996, at 794,

[FN94]. Citizens' Commission on Civil Rights, Voting, http://www,cccr.org/justice/lssue.cfm?id=17 (last visited Feb. 15, 2008).

[FN95]. See Teresa James, Project Vote, Caging Democracy: A 50 Year History of Partisan Challenges to Minority Voters 13-14 (2007), available at http://projectvote.org.fileadmin/Projectvote/Publicati ons/Caging_Democracy_Report.pdf.

[FN96]. Id.

[FN97]. See Id. at 14.

[FN98]. Consent judgment, *United States v. NC. Republican Party*, No. 5;92-00161 (E.D.N.C, Feb, 27, 1992).

[FN99]. UNC Ctr. for Civil Rights, snpra note 88, at 11.

[FN100]. Sheriff Targets Voting Fraud; He *Says* Illegal Residents Register at DMV Offices with False Documents, Charlotte Observer, Oct. 8, 2004, at 913.

[FN101]. Id.

[FN102]. Id.

[FN103]. Greensboro Hearing, supra note 11, at 86-87, 117-20.

[FN104]. Id. at 181-83.

[FN105]. Id. at 92.

[FN106]. Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, Shaw University, Raleigh, North Carolina, 51-55 (Jan. 26, 2006) [hereinafter Raleigh Hearing] (testimony of Deondre Ramsey) (transcript on file with the Center for Civil Rights, University of North Carolina School of Law).

[FN107]. Barbara &law, Making History; NCCU Students Led a March to the Polls that Helped Boost Voter Turnout and Rekindle the Public Service Mission of their University, IndyWeek, Nov. 24,, 2004, http://www.indyweek.com/gyrobase/Content?oid=bid%3A23147.

[FN108]. Soo Raleigh Hearing, supra note 106, at 64-66.

[FN109]. Id. at 51-52, 64.

[FN110]. Id. at 51-52.

[FN111]. Id. News accounts of the incident gave estimates that varied from 1000 to 1800 students, faculty and citizens. See, e.g., Solow, supra note 107.

[FN112]. Raleigh Hearing, supra note 106, at 51-53.

[FN113]. Id.

[FN114]. Id. at 52.

[FN115], Id. at 54.

[FN116]. Democracy South, supra note 89.

[FN117]. Id.

[FN118]. Raleigh Hearing, supra note 106, at 32.

[FN119]. Id.

[FN120]. Greensboro Hearing, supra note 11, at 41.

[FN121]. Id.

[FN122]. Id. at 42.

[FN123]. Id. at 97.

[FN124]. Id. at 102,

[FN125]. See id. 17 S. Cal. Rev. L. & Soc, Just, 577

Reports

*594 APPENDIX A: NORTH CAROLINA SUBMISSIONS WITHDRAWN, 1982-2005

Voting Rights in North Carolina: 1982-2006

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Table 1, [FN1]

Sub, #	County	Type of Change	Date of Withdrawal
2001-4063	Beaufort	Redistricting	Apr. 16, 2002
1985-2944	Cleveland	Election Admin.	Mar. 21 1995
2001-3957	Craven	Redistricting	July 30, 2002
2001-1474	Edgecombe	Redistricting	Dec. 19 2001
1991-2011	Halifax	Redistricting	Aug 8, 1991
1990-3761	Martin	MOE, Districting	June 26, 1991
1994-3835	Northampton	Poll Place (Changed)	Sept. 3, 1996
1996-2641	Pitt	Annexations (5)	Oct. 8, 1996

1999-3975	Rockingham	Staggered Terms, Term Office, Impl. Sched	June 20, 2000
2000-0815	Rowan	Majority Vote Requirement	May 9, 2001

[FN1]. Department of Justice, Freedom of information Act Request (on file with authors). 17 S. Cal. Rev. L. & Soo, Just 594

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Reports

*595 APPENDIX B: SUMMARIES OF VOTING-RIGHTS ACT CASES

Voting Rights in North Carolina; 1982-2006

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Research Methods

The data in this appendix were gathered from a variety of published and unpublished sources. For published cases, we relied on the court opinion for the summary. For unpublished eases, we relied on documents filed with the court, including complaints, Judgments and consent decrees. Both plaintiff and defendant attorneys also provided details of cases where no documents were available.

Statistical data on racial composition of communities and voting populations were taken from court documents when available. Otherwise, that information was gathered from the 1980, 1990 and 2000 Censuses. Information on the current voting systems and numbers of minority members represented on government boards was obtained from government websites for the relevant area and from attorneys familiar with the case.

At the conclusion of our research, there were several eases that were listed on the district court docket as having been filed, but no further Information was available. [FN1]

Bartlett v. Stephenson [FN2]

North Carolina state election officials appealed a ruling by the North Carolina Supreme Court that invalidated the state redistricting plan under the state constitution. The appellants alleged that the state court order violated the Voting Rights Act

The state supreme court held that the 2001 redistricting plan violated the "whole county provision" of the state constitution, which provided that no county could he divided in the formation of a Senate or Representative district. Because the redistricting plan would have violated this provision, the state supreme court ordered a new plan that would preserve county lines to the maximum extent possible, except where those lines could not be preserved to comply with Section 2 of the Voting Rights Act. The court *596 ordered that a new plan be drawn end that officials seek Section 5 preclearance of the plan in counties covered by the Voting Rights Act.

Election officials appealed to the U.S. Supreme Court, contending that a 1981 letter from the Department of Justice (DOJ) disallowed consideration of the whole county provision in redistricting. The Supreme Court found, however, that the DOJ letter did not disallow the whole county criterion, but only rejected use of this criterion where following it strictly would result in failure to comply with the Voting Rights Act. Appellants sought a stay of the North Carolina Supreme Court decision, but the Supreme Court rejected this request, finding that the North Carolina Supreme Court properly ruled that the new

plan should be developed and precleared before implementation.

Cannon v. Durham County Board of Elections [FN3]

Plaintiffs brought suit, alleging that a newly created method of electing members tote Durham County School Board violated constitutional provisions and Section 2 of the Voting Rights Act. The method of election in question originated when the Board of Commissioners for the County of Durham submitted a plan to the North Carolina State Board of Education for the merger of Durham County public schools and the city of Durham public schools, The state board approved the plan, under which the school hoard would be composed of seven members, Durham County would be divided into four individual single-member districts, which would each elect one representative. The four districts would then be combined to form two larger districts, which would each elect one representative. The anal member would be elected at-large. The new plan would create three majority-minority districts.

Some of the plaintiffs, white voters, challenged the merger plan in state court and received a favorable decision. While appeal was pending, the North Carolina General Assembly passed a "curative" statute. The North Carolina Supreme Court then remanded the case, without ruling on the merits, to the trial court for consideration of the effect of the now statute. The defendants then filed a motion to dismiss for mootness. In response to the defendants' motion, plaintiffs raised the argument that the school board election plan discriminated against white voters. The trial court granted defendants' motion to dismiss. The appellate court reversed that decision, but the North

Carolina Supreme Court ultimately affirmed *597 the dismissal because plaintiffs had failed to allege racial discrimination in their Initial pleadings.

Plaintiffs then brought suit in the Eastern District of North Carolina, alleging that the method of electing school board members violated constitutional provisions and Section 2 of the Voting Rights Act. The court granted summary judgment to the defendant, finding that the plaintiffs failed to show that white voters were entitled to protection. Specifically, the white voters had failed to show that black voters would act as a bloc to preclude election 'of white-preferred candidates, Defendants provided evidence permitting an inference that white voters were not a cohesive group. Generally, the court found that plaintiffs had failed to allege or prove the *Gingles* standards for Section 2 cases. Plaintiffs further failed on their constitutional claims for a variety of reasons, including an inability to show purposeful discrimination. The Fourth Circuit affirmed the holding in an unpublished opinion.

Cavanagh v. Brock [FN04]

Plaintiffs filed suit hi state court and it was removed to federal court, where several actions were consolidated. The action challenged the General Assembly's failure to adhere to provisions of the North Carolina Constitution in adopting a new state legislative apportionment plan. The plaintiffs contended that the state constitution prohibited the General Assembly from splitting counties in apportioning Senate and House districts and sought declaration that the 1982 plan, which split several counties, violated state law.

The court found, however, that the legal provisions relied upon by the plaintiffs had been refused Section

5 preclearance by the attorney general and were, therefore, not binding. In 1981, the North Carolina Board of Elections applied for preclearance of the 1968 whole county amendments to the state constitution. The Attorney General objected insofar as the provisions affected the forty counties in North Carolina covered by Section 5 of the Voting Rights. Act. Accordingly, the General Assembly revised the reapportionment plans during a special session in 1982 and, after modifications, they were given preclearance. The 1968 whole county provision still was not precleared.

In the present suit, the question before the court was whether the effect of the Attorney General's objection was to suspend the force of the 1968 amendments for the entire state or only for counties encompassed by the *598 Section 5 preclearance requirement. The court found that under North Carolina law, when one portion of a statute is declared unconstitutional or otherwise stricken, the surviving portion will be given effect only if it is severable. Applying this rule, the court found that once the Attorney General tamed to preclear the amendments, they had no force or effect statewide. The plaintiffs also advanced an argument that the 1968 amendments did not present a. change in voting *as* defined in the Voting Rights Act, so the Attorney General's objection had no effect. However, because such claims must be heard by the 'U.S. District Court for the District of Columbia, the court Inked jurisdiction.

Cleveland County Association for Government by the People v. Cleveland County Board of Commissioners [FN5]

The lawsuit that gave rise to this dispute was initially filed in the Western District of North Carolina

as *Campbell v. Cleveland County Board of Commissioners*, [FN6] by black voters and the NAACP, contending that the method of electing county commissioners violated Section 2 of the Voting Rights Act

In. Campbell, black voters and the NAACP objected to the method of electing county commissioners. Under the old system, the board consisted of five members selected at-large every two years for staggered, four-year terms. Between 1988 and 1994, no black candidate was elected to the board, although blacks constituted 20.9% of the county's population. From 1988 to 1994, five black candidates, all Democrats, attempted to win seats, but none survived the primary elections. The NAACP approached the board with its concern that at-large voting prevented black representation. A board committee studied the problem and recommended a new system of electing five commissioners from single-member districts and two commissioners from the county at-large. The committee also recommended consideration of redistricting. The board voted to accept the recommendations and asked the Cleveland County members of the General Assembly to introduce legislation authorizing the changes, which was done in 1993. The authorization expired in 1994, however, when the board could not agree to a redistricting plan, and no change *was* implemented. The NAACP and individual plaintiffs then filed suit.

The Campbell case was transferred to the U.S. District Court for the District of Columbia In 1994. After mediation, the parties adopted a consent*599 decree with the court's approval, which expanded the board from five to seven members and adopted limited voting. For the 1994 and 1996 elections, the old

method of voting would remain in place with two exceptions: (1) the members of the Board of Commissioners elected in 1996 would serve only two years and (2) after the 1994 election, two additional Commissioners who were "representatives of the black community of Cleveland County" would be appointed to the board for four-year terms. Starting with the 1998 election, all seven seats would be elected at the same time, with the newly-elected commissioners to serve at-large, In both the primary and general election, each voter could cast up to four votes for different candidates, with the top seven candidates winning seats, The agreement also stated that after the 1998 election, the district court could, on the NAACP's petition, reduce from four to three the number of votes that could be cast by each voter If the new system had not provided equal opportunity for black citizens to elect candidates of their choice. The Attorney General predated the plan in 1994 and, thereafter, the Board of Commissioners appointed the two new commissioners.

In 1996, the plaintiffs in the immediate suit, the Cleveland County Association for Government by the People, filed in the Western District of North Carolina. Tire plaintiffs were an unincorporated association of voters in the county and six individual plaintiffs, all of whom were white. They brought suit against the board and the NAACP, challenging the adoption of the consent decree plan. They objected to the election plan because the two new members were to be appointed on the basis of race and subsequent elections could be conducted in a race-based manner.

The suit was again transferred to the D.C. District Court, which granted summary judgment for the board and the NAACP. On appeal, however, the D.C.

Circuit vacated that holding and found for the plaintiffs. The court did not find that plaintiffs could prevail on constitutional grounds, but, rather, that they were entitled to summary judgment on state law claims. The board did not follow the statutorily mandated scheme when it altered the electoral system, and state law did not permit the board to alter its structure and mum of election unilaterally. The court found that it was allowable for plaintiffs to bring the second suit because they were not properly represented in the Campbell suit, as they had diverging interests to the plaintiffs and the board.

*600 *Daniels v. Martin County Board of Commissioners* [FN7]

Plaintiffs filed suit under Section 2 of the Voting Rights Act, challenging the method of electing the Martin County Board of Commissioners and the town boards of Jamesville, Robersonville and Williamston Plaintiffs alleged that the methods of election diluting the voting strength of black citizens. The parties entered consent decrees once it was determined that the plaintiffs were able to present a prima facie case that the methods violated Section 2.

At the time of the suit, needy 45% of the population of Martin. County was black. In 1990, 279 of the 612 residents of Jamesville were black. Nearly 55% of the population of Robersonville and approximately 51% of the population of Williamston were black.

Under the new method of election, the county Board of Commissioners consists of five members, elected at-large under a system of limited voting. The county is divided into two districts. Two of the five members reside in the western district, and three reside in the eastern district. Voters in the western district can east

one vote in the primary and one vote in the general election for the two seats, while voters in the eastern district cast two votes in the primary and two votes in the general election for the three seats. Candidates with the most votes are elected with no run-off elections. Members serve four-year terms,

The method of voting for the town of Janesville was also changed. In the previous system, five members of the town board and a mayor were elected at-large for two-year terms. Under the new system, the town board consists of five members elected with at-large, limited voting. MI candidates are listed on a single ballot, but each voter can only vote for two candidates. The mayor is elected separately.

The town of Robersonville also agreed to abandon its system, by which five members of the town Board of. Commissioners were elected at-large fox two-year terms. Robersonville adopted a method that elects give members, two from each of two districts and one at-large. Only candidates residing in a district are eligible to run for one of the two seats from that district. The districts were drawn to provide for one majority-minority district. The mayor is elected separately.

*601 *Ellis v. Vance County* [FN8]

Black citizens from Vance County brought suit under Section 2 of the Voting Rights Act opposing the method of electing the county Board of Commissioners. Five board members were elected to four-year staggered terms in at-large partisan elections. Candidates were required to live in residency districts.

The parties entered a consent decree that changed the method of election, under the changed system,

seven commissioners are elected, one from each of seven districts. Elections are staggered. The change in voting has re- suited in greater minority candidate success; there currently are three black commissioners, and the current representative of District One is the first female–and the first black female–over to serve on the Vance County Board of Commissioners,

Fayetteville, Cumberland County Black Democratic Caucus v. Cumberland County [FN9]

The Cumberland County Black Democratic Caucus and individual black voters filed suit, alleging that the five-member, at-large election of county commissioners for Cumberland County violated Section 2 of the Voting Rights Act. The plaintiffs favored a seven-member, single-member district system. While the action was pending, the county voluntarily adopted a remedial mixed single-member/at-large districting plan that was precleared by the DOS. Under this plan, the board would consist of seven members; two elected from District One, three elected District Two and two elected at-large. District One would be predominantly black. Bach member would serve a four-year term, and terms would be staggered.

The plaintiffs, still seeking development of a single-member district plan, attempted to get a preliminary Injunction to stop implementation of this plan, but the court denied their request, and elections were held under the now plan. Once the DOJ cleared the county's plan, the district court granted the plaintiffs leave to amend their original complaint to address the lawfulness of the now precleared plan. The plaintiffs failed to amend their complaint and made other filing errors, resulting in the district Court granting

judgment in favor of the defendants. When the suit was terminated, the mixed single-member/at-large system remained in place, The Fourth Circuit affirmed this holding.

*602 Under the new system, black voters have had a greater opportunity to elect candidates of their choice. However, racially polarized voting persists. Currently, both commissioners elected Rem District One are black, but, as the plaintiffs anticipated, the three District Two and two at-large seats continue to be coupled only by white members.

Fussell v. Town of Mount Olive [FN10]

Nine individual plaintiffs and the Mount Olive Area of the Wayne County Minority Political Action Committee brought suit, alleging discriminatory practices in the method of electing the Board of Commissioners for the town of Mount Olive, and sought relief addressing this issue, including the institution of a new election format for the town.

According to the 1990 Census, almost 52.5% of the population of Mount Olive was black. Despite numerous black candidacies, there had never been more than one black candidate elected to the Board of Commissioners at any one time. The at-large method prevented black residents from electing representatives of their choice.

During the course of the suit, the proceedings were stayed to give the parties the opportunity to reach a compromise on a voting system for the town. The town and plaintiffs agreed to a plan with four single-member districts and one at-large seat. Following public hearings on the change in voting, the town learned of white opposition to the plat and selected a now plan, which it submitted for preclearance. Under

the new plan, the commission would be expanded from five members to six–four elected from single-member districts, and two elected at-large.

The plaintiffs opposed the new plan, which would retain a greater number of at-large seats and packed 97% of black voters into one district. In November 1993, black voters rallied in the at-large election to elect one black candidate, who was a plaintiff in the Section 2 suit, to the Town Commission. The board petitioned the Section 2 court to prohibit *her* front participating in board discussions or voting on the method of elections, but the court denied the request.

When the Department of Justice reviewed the 4-2 plan, it concluded that the board had failed to provide an adequate justification for shifting from the method agreed upon during the lawsuit; there *was* no convincing nonracial explanation and no substantive changes between the July 1993 agreement with the plaintiffs' and September 1993 could justify shift. Accordingly,*603 the Attorney General refined Section 5 preclearance, The town has since adopted a districting plan with four districts and one at-large seat. There is currently one black member of the Commission.

Gause v. Brunswick County [FN11]

Plaintiffs brought suit under Section 2 of the Voting Rights Act challenging the modified at-large election system of Brunswick County. The Eastern District of North Carolina granted summary judgment to the defendant, and the Court of Appeals affirmed because the plaintiffs could not show adequate injury.

The population of Brunswick County changed dramatically between 1960 and 1990. Due in part to a large influx of white retirees, the percentage of

residents in the county fell from 35% to 18%. By 1990, 83% of the county's voting-age population was white. In the county's twenty-two election precincts, blacks constituted a majority in only one.

The county used a modified at-large system to elect members to the Board of Commissioners. There were five residency districts within the county, and the candidate that won the most votes in each residency district compared to other candidates in the same residency district was elected. Voters wore permitted, however, to vote for any candidate, regardless of where they lived. Black candidates ran for board seats in nine elections since 1972 and were elected three times, but, since 1982, no black candidate had been elected to the board. Black voters brought suit, alleging the method of election diluted minority voting in violation of the Voting Rights Act.

The district court granted summary judgment to the county, holding that voters failed to establish a dilution claim because they could not show the minority population was sufficiently large and geographically compact to constitute a majority in a single-member district. Because minority voters were unable to show the potential to elect representatives in the absence of the existing voting structure, they could not show injury resulting from the election system. The court could not approve the plaintiffs' alternative proposals for voting districts because they would create districts that deviated in size by more than 10%, which would be unacceptable absent a showing of dilution.

There currently are no blacks on the county's five-member Board of Commissioners

In this action, a black registered voter of Guilford County successfully demonstrated the need for an injunction to stop state officials of North Carolina from implementing changes to the procedure for electing superior court judges because the changes, including staggered voting, which might dilute black voter strength, had not been precleared pursuant to Section 5 of the Voting Rights Act.

In 1964, North Carolina bad thirty judicial districts, twenty-eight of which were served by one judge each, with the remaining two served by two judges. All judges were elected simultaneously for eight-year terms, Candidates for the office of superior court judge in judicial districts with more than one judge were not required to announce for which vacancy they were filing, and neither district had staggered terms for the judges.

In 1965, the North Carolina Assembly passed an act that established a system of numbered seat elections for the position of superior court judge in districts with two or more vacancies. Then, in 1967, the General Assembly enacted legislation which provided for an additional resident judge in the 12th, 18th, 19th and 28th districts to serve eight-year staggered terms from the positions already in existence in those districts. In 1977, the General Assembly passed legislation providing for an additional resident judge in the 3rd, 10th, 12th, 14th, 19th and 20th judicial districts to serve eight-year terms staggered from the positions already In existence in those districts. In 1977, the General Assembly also created Judicial districts 15A and 15B out of former district 15, judicial districts 19A and 19B out of former district 19 and judicial districts 27A and 27B out of former district 27. In 1983, the

General Assembly enacted a law that provided for additional judges in judicial districts 1, 9, 18 and 30.

Plaintiffs objected that In North Carolina, forty of the one hundred counties were subject to Section 5 of the Voting Rights Act, meaning changes to voting procedures in those counties should have required preclearance by the Attorney General. Defendants admitted that the 1977 laws and 1983 laws were not precleared, but contended that the

1965 and 1967 laws were precleared because they were Included In later enactments of the General Assembly that were submitted to the Attorney General. Defendants also argued that Section 5 was not intended to apply to judicial elections.

*605 The court granted the plaintiffs injunctive relief. The court found that the Voting Rights Act changes to the election of judges because its plain language stated that it applied to all voting, without limitation to the object of the vote. The court then found that the sections of law that the defendants claimed to have submitted were not precleared. The changed sections cord not be put into effect without approval of the Attorney General.

The decision was affirmed by the U.S. Supreme Court in *Martin v. Haith* [FN13]

Hall v. Kennedy [FN14]

Black voters brought suit under Section 2 of the Voting Rights Act opposing the at-large method of electing the Clinton City Council and Clinton City Board of Education, arguing the system denied them the opportunity to elect candidates of their choice.

Under the existing system, the city council consisted of a mayor and four council members, the mayor was

elected at-large for a two-year term. City Council members also were elected at-large, but for four-year terms and the elections were staggered. At the time of the suit, 38% of the population of Clinton was black. Since 1973, black candidates had run at least eight times for city council, but had been elected only twice. The same individual had been elected both times, and he had since been defeated in his bid for reelection. The court found that if the case were tried, it would find from the evidence that the method of election had the effect of denying black voters au equal opportunity to elect candidates of their choice. However, to avoid the costs of litigation, plaintiffs and the Clinton City Council agreed to a consent decree. Under the new system, the council is composed of a mayor and five council members. The mayor is elected at-large every two years. The council members are elected from five districts, and only voters residing in the district may vote for a council member from that district. The council members serve staggered four-year terms. Two members of the current Clinton City Council are black.

A consent decree also was entered to resolve the suit against the Board of Education. At the time of the suit, the Board of Education consisted of five members, three elected at-large for four-year 'staggered terms and the other two appointed by the three elected members for four-year terms. Black citizens constituted 36% of the school administrative unit. Since the *606 system of election was Instituted in 1976, black candidates had run for election at least five times in the seven elections, but were elected only twice.

The court again found that if the case were tried, it would find from the evidence that the at-large method of election had the effect of denying black voters an

equal opportunity to elect candidates of their choice. The parties entered a consent decree imposing a new system of elections. Under the new system, the school board consists of six members elected for four-year terms. The elections are staggered so that three members are elected every two years. In each election, all three members are listed on a single ballot and each voter can only vote for one candidate, two members of the current Board of Education are black.

Harry v. Bladen County [FN15]

Black citizens of Bladen County filed suit pursuant to Section 2 of the Voting Rights Act challenging the method of electing members to the Bladen County Board of Commissioners. The plaintiffs initially urged members of the county government to change the at-large system of election because it diluted minority voting strength, when they were unsuccessful in garnering change, they contacted legal services attorneys who agreed to represent them. In 1986, the B laden County Board of Commissioners voted to appoint a committee to study the plaintiffs' concerns, determine if a change was needed and, if so, recommend specific changes. A black citizens' group determined that a five-district plan with two black majority districts could be drawn, they presented the plan to the committee, and the committee reached a compromise agreement in 1987. It recommended a plan with five single-member districts (two majority-minority) and one at-large seat to the board. The board then retained counsel to review alternative plans, interviewed other citizens, collected father data and held hearings. In April 1987, the board decided against the committee recommendation and adopted a plan composed of three two-member districts (one majority-minority) and one at-large seat.

Black citizens opposed this plan because two white incumbents lived in the black district and only one of the seats in that district would be available in the 1988 election. Still, the board decided to proceed with the plan. The county could net unilaterally change the election method without a referendum, and so the commissioners attempted to have the General Assembly enact the proposal, When this failed, the county succeeded in obtaining authorization from the General Assembly to make the change by itself, *607 The commissioners adopted the plan and applied for Section 5 preclearance. The defendants also sought to dismiss this pending Section 2 action, and the court stayed action on this motion, pending the Section 5 preclearance determination.

The Attorney General did not approve the board plan because it appeared "the Board had taken extraordinary measures to minimize minority voting strength." County officials then brought suit in the District of Columbia seeking Section 5 approval and moved to stay discovery In the Section 2 action. The plaintiffs did not want to dismiss the Section 2 suit, objecting to the still-existing at-large system because if they did so, the 1988 election could proceed under that system. The D.C. District Court set a hearing date for plaintiffs' motion for Interim relief. On the morning of the set hearing, the parties reached a settlement changing the election system. Under the new system, voters would elect two members from each of three districts and three members at-large. The at-large seats would be elected by a plurality win method, in which voter could vote for only one candidate. The majority black district was modified so that one white Incumbent would not run and the other agreed to run for an at-large seat, making both seats available.

Under the new plan, black citizens would have a realistic opportunity to elect three of nine seats.

Once the consent order was entered, the court was still charged with determining whether to award attorneys' fees, costs and expenses. Defendants argued that because the old system was never officially declared unlawful, plaintiffs were not a prevailing party. The court found, however, that plaintiffs succeeded in achieving a system that would give black citizens fair represented in the 1988 elections and without filing this action, that result could not have been achieved. Plaintiffs were, therefore, the prevailing patty and entitled to reasonable attorneys' fees and costs.

Haskins v. County of Wilson [FN16]

The federal court held under Section 2 that the at-large method of electing the Wilson County Board of Commissioners denied black citizens art opportunity to participate in the political process and elect candidates of their choice. In response, Wilson applied for preclearance of an election system with two multi-member districts. The Department of Justice agreed that the proposed plan was better than the at-large system, but could not agree that it was adopted without a discriminatory purpose. Of the two districts created, one would elect five representatives and was 76% white, *608 the other would elect two representatives and was 67% black. Nearly half of the county's black population was placed in the larger white-majority district. The Attorney General refused preclearance.

The county has since adopted a system with seven districts that each elect one commissioner. There currently are three black members of the board.

Hines v. Ahoskle [FN17]

Edna Hines and several other black plaintiffs challenged the at-large election system in Ahoskle, a small town in Hertford County. At the time of stilt, the town was 50.5% black and the town's voting age population was 45.6% black. Plaintiffs challenged the existing election system under which the town elected its mayor and five town council members through at-large elections. Ahoskie had a history of racially polarized voting; an average of 93% of blacks voted for black candidates and 93.4% of whites voted for white candidates. Throughout the history of Ahoskie, seven black candidates had run for town council, but only two were elected.

Hines originally filed suit in November of 1989, challenging the at-large system for impermissibly diluting black voting strength. Hines was successful in her claim in that in response, the town stipulated that the existing system impermissibly diluted black voting strength in violation of Section 2. Accordingly, the town devised a new election plan that would divide the town into two districts, one majority black and one majority white. Two town council members would be elected from each district by plurality vote within the district. The plan also provided for a fifth member to be elected at-large. In 1991, the district court determined that the plan required preclearance and submitted it to the Attorney General, who granted preclearance. The town then requested that the district court approve its plan by granting summary Judgment.

Plaintiffs opposed the town's motion for summary judgment, arguing that the town plan still diluted minority voting due to the at-large seat, Plaintiffs presented two alternative election plans, one that

involved division of Ahoskie into three districts, and a second that proposed five single-member districts. The district court held hearings and, after reviewing the evidence, found the at-large election of the fifth town council member, which Ahoskie originally proposed, to be "problematic" and not a complete remedy as required by the Voting Rights Act. The district court decided it *609 would be best to retain the two districts created under the town plan, but eliminate the fifth council position.

On appeal, the Fourth Circuit overturned the tower court decision not to implement the town's 2-2-1 plan. The court found that the district court should have deferred to Ahoskie's chosen size for the town council because there was no evidence that the solution was chosen in order to diffuse black voting strength and the plan was adequate to provide black voters with the maximum opportunity to elect representatives of their choice. Though evidence from hearings indicated the best solution might be to have a fifth district composed of a "swing vote," the small population of Ahoskie made the creation of such a district impossible. Because that solution was not possible, the court was required to accept Ahoskie's proposal, which was the next best alternative to guarantee both racial groups could elect representatives of their choice. The court recognized that the new system could still prevent blacks from sometimes electing the candidate of their choice, but found that It was a complete remedy under the Act, The court found that the alternative plans provided by Hines would provide minority voters with overproportional representation, and since the only justification for such a plan would be racial concerns, it would potentially violate the equal protection rights of white voters. Though plaintiffs did not win implementation of their preferred plan, they were

successful in proving dilution and changing the at-large system,

Holmes v. Lenoir County Board of Education [FN18]

Plaintiffs filed suit under Section 2 of the Voting Rights Act, alleging that the method of electing the Lenoir County Board of Education denied minority citizens an equal opportunity to elect candidates of their choice. Under the existing system, the board consisted of five members elected at-large in partisan elections for staggered, four-year terms. At the time of the suit, over 39% of the population of Lenoir County was black.

The parties entered into a consent decree that changed the method of election. Under the new system, the board is composed of seven members elected in partisan, at-large elections. The increased size of the board *was* designed to give minority voters a greater opportunity to elect candidates of their choice. The consent decree required that the two new seats should be filled by representatives of the minority community until new elections could be held.

*610 *Johnson v. Halifax County* [FN19]

The United States and nineteen registered black voters successfully obtained a preliminary injunction preventing elections for the Halifax County Board of Commissioners under a discriminatory method of election. Both the United States and individual plaintiffs alleged that the at-large method of election violated Section 2 of the Voting Rights Act and the Constitution, and the United States alleged that Halifax County failed to obtain preclearance of two components of its election method in violation of Section 5 of the Voting Rights Act.

Racially Polarized Voting in 2006, 2008, and 2010 in North Carolina State Legislative Contests:

A Report for the Southern Coalition of Social Justice

Prepared by: Ray Block, Jr.

Executive Statement

Summary: I assess 54 elections in the state of North Carolina in 2006, 2008, and 2010 to determine the degree to which African-American candidates for political office fail to win support of non-Blacks,[1] in the event that they are the preferred candidates among Black voters. Using a series of analytical techniques, including descriptive statistics, correlation analysis, and Gary King's ecological inference software, I provide evidence that non-Blacks consistently vote against African-American candidates and that Blacks demonstrate high rates of racial bloc voting in favor of co-ethnic candidates.

Background and Experience

Ray Block is an Assistant Professor in the Department of Political Science and Public Administration at the University of Wisconsin, La Crosse. I received my PhD in Political Science from The Ohio State University. My research and teaching interests include racial and ethnic group politics, voting behavior, and research design. Details about relevant publications

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[1] It should be noted that the relevant comparison is between Blacks and non-Blacks rather than Blacks and Whites. The goal here Is not to make cross-racial comparisons but simply to determine the degree to which, for example, Blacks prefer co-ethnic candidates.

and professional experience appear in the curriculum vita at the end of this document.

Purpose of the Analysis

I have been recruited by the Southern Coalition of Social Justice to explore voting patterns in U.S. and North Carolina state congressional contests. In this report, I attempt to address the following questions:

1. Is there a relationship between the number of Blacks who vote in a particular district and the amount of votes that an African-American candidate receives?

2. Is there evidence of racial polarization in the preferences of voters who participate in electoral contests involving African-American candidates running against non-Black candidates?

3. Is the number of elections won by Black candidates higher in majority-minority districts than in other districts?

Data and Implementation

All the data used in subsequent analysis are drawn from files obtained from [FTP directory site of the North Carolina Board of Elections (ftp://www.app.sboeistate.nc.us/ENRS/). These data are organized at the level of the congressional district for some of the electoral contests examined and state legislative units are the geographic locale for other races. In all cases, data are aggregated from the precinct and/or county level. Analyses and results utilize statistical software from a variety of sources, including Microsoft Excel, Stata, R, and Gary King's EZI programming package.[2]

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[2] This procedure is the subject of King, Gary, A Solution to the Ecological Inference Problem: Reconstructing Individual

The primary pieces of information utilized in the analyses are:

- T = the proportion of votes cast for the African-America candidate in a given election contest
- X = the proportion of Black who voted in a given election contest
- N = the number of total votes cast (regardless of candidate) in a given election
- MM = the proportion of election contests that took place in districts that were classified as "majority-minority" (in this case, majority Black) in either 2000 or 2010
- OUTCOME = the proportion of times an African-American candidate wins an election (i.e., earns the largest number of votes) between him/herself and a non-Black opponent

Results and Discussion

To address the first research question, I create a scatter plot depicting the correlation between X (the proportion of votes cast for the African-American candidate) and T (the proportion of votes that were cast by North Carolina residents). The results are in Figure 1. I supplement the scatter plot with a correlation analysis. In this case, a correlation estimate that is greater than zero suggests a positive relationship between X and T (i.e., the share of votes a Black candidate receives increases with the proportion of African American voters in a given district). Conversely, a negative correlation estimate represents an inverse relationship in which the proportion of votes

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Behavior from Aggregate Data (Princeton University Press, 1997).

an African-American candidate earns decreases as the amount of Black voters in a jurisdiction increases. A correlation of zero suggests no meaningful relationship between X and T. Taken together the results reveal a moderate and positive correlation between these variables (r = 0.4752), and strength of this correlation is great enough that we can conclude that it did not happen by chance (significance = 0.003).

To address the second question, I use King's ecological inference methods to infer the proportion of African-American and non-Black voters in each electoral contest who preferred the candidate of color. As noted, King's programming package allows researchers to infer individual behaviors from aggregate Information. In this case, I simulate racial differences in candidate preference using the proportion of votes cast for the African-America candidate in a given election contest (T), the proportion of Black who voted in a given election contest (X), and the number of total votes cast (regardless of candidate) in a given election (N). I create separate tables of results for the 2006 (see Table 1), 2008 (see Table 2), and 2010 (see Table 3) election contests. In each table, the columns headed with "Beta B" indicate the proportion of African-American support for the candidate listed on left hand side. "Beta W" on the other hand, is the estimate of non-Black support for that candidate. The number patterns in these tables suggest the presence of racially polarized voting: compared to those of non-Blacks, the proportion of African Americans who prefer the Black candidate is noticeably higher than in virtually all of the electoral contests.

The final question pertains to effectiveness of majority-minority districts. Specifically, question 3 asks whether Black candidates are more likely to win

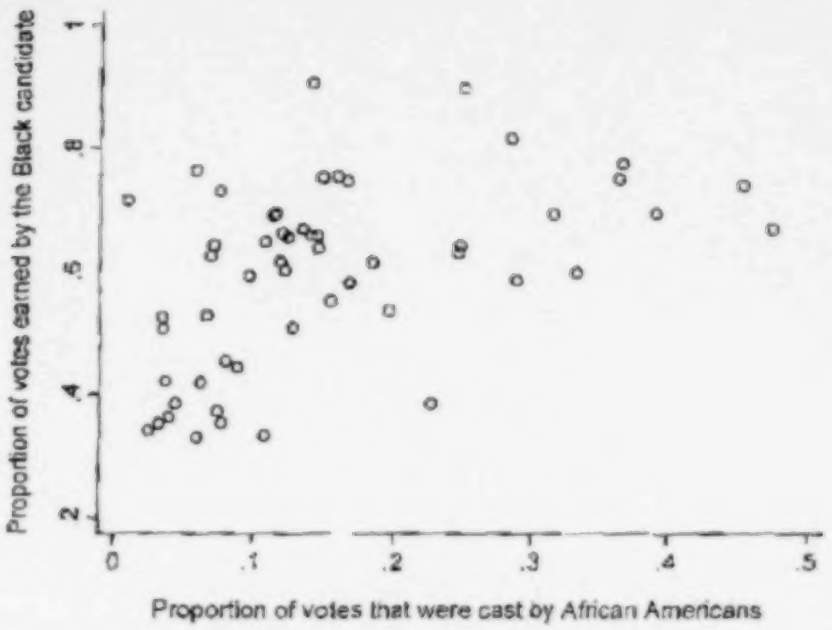
elections In majority-minority districts than candidates of the same race in other districts. To evaluate this question, I sort the outcome of electoral contests (specifically, whether the African-American candidates "wins" or earns more votes than the non-Black candidate) by whether the electoral contest took place in a district that was met the definition of being "majority minority" in either 2000 or 2010. Figure 2 clearly illustrates that the proportion of Black candidates who win elections is noticeably higher in majority minority districts than in non-majority-minority districts and that the relationship between electoral success and district type is statistically significant (chi-square = 28.4211, sig. = 0.000).

Conclusion

I offer several different analytical approaches that each tell a similar story about the degree to which polarized voting exists in 2006, 2008, and 2010 North Carolina congressional district elections. Recall that, paraphrasing Justice Brennan's opinion in Gingles, racially polarized voting can be identified as occurring when there is a consistent relationship between the race of a voter and the way in which s/he votes. In all of the elections examined here, such a consistent pattern emerges. Furthermore, the evidence in Figure 2 suggests that majority minority districts facilitate the election of African-American candidates.

[redacted]

A scatter plot depicting the correlation between the proportion of votes cast for the African-American candidate and the proportion of votes that were cast by Black North Carolina residents



Source: Data compiled from the FTP directory site of the North Carolina Board of Elections (ftp://www.app.sboe.state.nc.us/ENRS/).

Note: The correlation between these variables is both positive ($r = 0.4752$) and statistically significant ($p = 0.0003$). The scatter plot combines data from 2006, 2008, and 2010 election contests.

Table 1 Ecological Inference Analysis of Racial Polarization in Biracial US and North Carolina State Congressional District Election Contests of 2006

African-American Candidate	Election Contest	King's EI Estimates	
		Beta B (Blacks)	Beta W (Whites)
Vernon Robinson (R)	NC US Congressional District 13	0.8085	0.3644
Larry Shaw (D)	NC State Senate District 21	0.8324	0.5660
Tony Foriest (D)	NC State Senate District 24	0.8054	0.2762
Malcolm Graham (D)	NC State Senate District 40	0.8303	0.4890
Vernon Malone (D)	NC State Senate District 24	0.7177	0.3437
Howard Hunter (D)	NC State House District 5	0.8269	0.5882
William L. Wainwright (D)	NC State House District 12	0.8097	0.6301
Kever M. Clark (D)	NC State House District 14	0.8268	0.4951
Carnell Taylor (D)	NC State House District 25	0.8264	0.4867
Linda Coleman (D)	NC State House District 39	0.8372	0.6294
Earl Jones (D)	NC State House District 60	0.8045	0.3373
Jim H. Bernon, Sr (D)	NC State House District 69	0.8168	0.3930

Source: Data compiled from the FTP directory site of the North Carolina Board of Elections (ftp://www.app.sboe.state.nc.us/ERIRS/).

Note: Estimates are simulated values using Gary King's programming package for estimating individual-level behavior from aggregate-level information (for details, see King 1997). "Beta B" indicates the proportion of African-American voting support for the Black candidate listed to the left hand side of the table. "Beta W" on the other hand, is the estimate of non-Black support for this candidate. Both estimates can be interpreted as proportions.

Table 2 Ecological Inference Analysis of Racial Polarization in Biracial US and North Carolina State Congressional District Election Contests of 2008

African-American Candidate	Election Contest	King's EI Estimates	
		Beta B (Blacks)	Beta W (Whites)
Mel Watt (D)	NC US Congressional District 12	0.8875	0.5106
Donald ("Don") Davis (D)	NC State Senate District 5	0.8932	0.7890
Vernon Malone (D)	NC State Senate District 14	0.8838	0.3270
Floyd B. McKissick, Jr. (D)	NC State Senate District 20	0.8824	0.6701
Anthony (Tony) Forrest (D)	NC State Senate District 24	0.8816	0.7324
Charlie Dannelly (D)	NC State Senate District 38	0.8792	0.2964
Malcolm Graham (D)	NC State Senate District 40	0.8948	0.5031
William L. Wainwright (D)	NC State House District 12	0.8857	0.6362
Larry D. Hall (D)	NC State House District 29	0.8915	0.3312
Dan Blue (D)	NC State House District 33	0.8872	0.5121
Linda Coleman (D)	NC State House District 39	0.8907	0.5033
Ty Harrell (D)	NC State House District 41	0.8965	0.7574
Betty Mangum (D)*	NC State House District 52	0.8773	0.4550
Celo Faucette (R)	NC State House District 63	0.8964	0.6652
Larry Womble (D)	NC State House District 71	0.8837	0.7140
Ada M. Fisher (R)	NC State House District 77	0.8977	0.6699
Kelly Alexander (D)	NC State House District 107	0.8851	0.4533
Pearl Burris Floyd (R)	NC State House District 110	0.8878	0.5621

Source: Data compiled from the FTP directory site of the North Carolina Board of Elections (ftp://www.app.sboe.state.nc.us/ENRS/).

Note: Estimates are simulated values using Gary King's programming package for estimating individual-level behavior from aggregate-level information (for details, see King 1997). "Beta B" indicates the proportion of African-American voting support for the Black candidate listed to the left hand side of the table. "Beta W" on the other hand, is the estimate of non-Black support for this candidate. Both estimates can be interpreted as proportions. The candidate with an asterisk (*) is an American Indian candidate, despite not being an African-American, this candidate receives similar levels of support from Black voters.

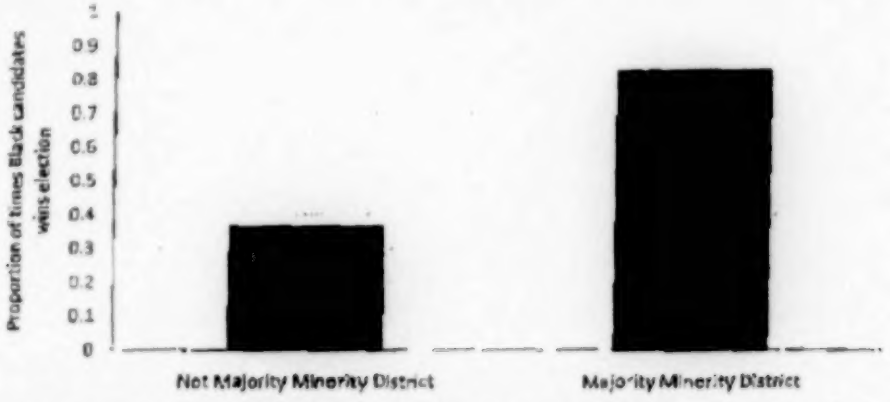
Table 3 Ecological Inference Analysis of Racial Polarization in Biracial US and North Carolina State Congressional District Election Contests of 2010

African-American Candidate	Election Contest	King's EI Estimates	
		Beta B (Blacks)	Beta W (Whites)
G. K. Butterfield (D)	NC US Congressional District 1	0.9226	0.5906
Mel Watt (D)	NC US Congressional District 12	0.9187	0.5584
William (Bill) Randall (R)	NC US Congressional District 13	0.9224	0.3064
Edward (Ed) Jones (D)	NC State Senate District 4	0.9244	0.6160
Don Davis (D)	NC State Senate District 5	0.9249	0.7153
Dan Blue (D)	NC State Senate District 14	0.9204	0.6037
Floyd B. McKissick, Jr. (D)	NC State Senate District 20	0.9246	0.6934
Eric L. Mansfield (D)	NC State Senate District 21	0.9242	0.7132
Tony Foriest (D)	NC State Senate District 24	0.9235	0.5131
Gladys A. Robinson (D)	NC State Senate District 28	0.9225	0.5522
C. Morgan Edwards(R)	NC State Senate District 37	0.9250	0.5547
Malcolm Graham (D)	NC State Senate District 40	0.9228	0.5366
William L. Wainwright (D)	NC State House District 12	0.9256	0.4137
Larry M. Bell (D)	NC State House District 21	0.9188	0.6188
Jean Farmer-Butterfield (D)	NC State House District 24	0.9224	0.5901
H.M. (Mickey) Michaux (D)	NC State House District 31	0.9229	0.6153
Rosa U. Gill (D)	NC State House District 33	0.9207	0.3990
Garland E. Pierce (D)	NC State House District 48	0.9230	0.2274
Alma Adams (D)	NC State House District 58	0.9207	0.4502
Marcus Brandon (D)	NC State House District 60	0.9249	0.5931
Earline W. Parmon (D)	NC State House District 72	0.9247	0.4855
Beverly Miller Earle (D)	NC State House District 101	0.9244	0.4014
Kelly Alexander (D)	NC State House District 107	0.9245	0.7232

Source: Data compiled from the FTP directory site of the North Carolina Board of Elections (ftp://www.app.sboe.state.nc.us/ENRS/).

Note: Estimates are simulated values using Gary King's programming package for estimating individual-level behavior from aggregate-level information (for details, see King 1997). "Beta B" indicates the proportion of African-American voting support for the Black candidate listed to the left hand side of the table. "Beta W" on the other hand, is the estimate of non-Black support for this candidate. Both estimates can be interpreted as proportions

Figure 2 Bar charts showing that the proportion of Black candidates who win elections is noticeably higher in majority minority districts than in non-majority-minority districts



Source: Data compiled from the FTP directory site of the North Carolina Board of Elections (ftp://www.ncsbe.gov/ENRS/).

Note: Estimates represent raw counts of electoral victories (i.e., instances in which the African-American candidate earned more votes than the non-Black candidate in a given election) sorted by whether the election contest took place in a district that was "majority minority" in 2000 or 2010. The bars in this chart combine data from 2006, 2008, and 2010 elections.

Curriculum Vita

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Education

- Ph.D., The Ohio State University, 2006. Major: American Politics Dissertation Title: "Racial Cleavages in Political Interest"
- M.A., Political Science, The Ohio State University, June 2002
- B.A., Philosophy; B.A. Political Science, Howard University, May 1999

Professional Positions

- Assistant Professor, Political Science/Public Administration, University of Wisconsin-La Crosse, 2010-Present
- Assistant Professor, Department of Political Science, Florida State University, 2006-2010
- Adjunct Professor, Department of Political Science, Middle Tennessee State University, 2005-2006
- Instructor, Department of Political Science, The Ohio State University, 2002-2005

Teaching Experience

University of Wisconsin-La Crosse

- POL - Political Science and Public Administration 101, American National Government, 1 course
- POL - Political Science and Public Administration 301, American Presidency, 1 course
- POL - Political Science and Public Administration 302, Legislative Process, 1 course
- POL - Political Science and Public Administration 361, Research Methods in Politics and Government, 2 courses

Teaching Honors and Awards:

- Block Jr., Ray, "Wisconsin Teaching Fellows and Scholars (WTFS) Program", $5,352.00 (May 31, 2011 - May 1, 2012).

Teaching Presentations:

- An Authentic and Interactive Program for Writing Emphasis Courses. Presented at the "Confluence of Four ("C4") Working Group Meeting (10/1/2k10)

Research/Published Intellectual Contributions

Journal Articles:

- Block Jr., Ray. 2011. "Backing Barack Because He's Black: Racially-Motivated Voting in the 2008 Presidential Election" Social Science Quarterly 92(June): 434 — 456.
- Block Jr., Ray. Forthcoming (2011). "What about Disillusionment? Exploring the Determinants of Black Nationalism." Political Behavior 33(March): 27 — 51.
- Block Jr., Ray and Chinonye Onwunli. 2010. "Managing Monikers: The Role of Name

Presentation in the 2008 Presidential Election." Presidential Studies Quarterly 40 (September): 464 — 481.

Book Chapters:

- Block Jr., Ray. 2010. "Some Like it Hot: Toward A Political Climate Explanation of Racial Differences in Political Interest." In African-American Political Psychology: Identity, Opinion, and Action in the Post-Civil Rights Era, eds. Tasha Philpot and Ismail K. White. New York, NY: Palgrave Macmillan.

Encyclopedia Entries:

- Block Jr., Ray. 2007. "Urban Politics." In International Encyclopedia of the Social Sciences, Second Edition. Farmington Hills, MI: Thomson Gale.

Book Reviews:

- Block Jr., Ray. 2011. Book review of The Obama Victory: How Media, Money and Message Shaped the 2008 Election, by Kate Kenski, Burce W. Hardy, and Kathleen Hall Jamieson. Forthcoming in spring/summer issue of American Review of Politics.
- McClerking, Harwood K. and Ray Block Jr. 2005. Book review of The New White Nationalism in America: Its Challenge to Integration, by Carol M. Swain. National Political Science Review 10: 205¬207.

Other, Non-Peer-Reviewed Manuscripts:

- Block Jr., Ray. 2009. "History Voters and their Role in the 2008 Presidential Election." Verj Magazine, January.

- Block Jr., Ray. 2007. "Usually, But Not Always': A Report on the Race Gap in Political Interest, 1952 - 2004," The Crisis 114 (January/February): 13-17.

Research Presentations

- The Obama Synthesis Project: Mastering the Literature on Obama's Candidacy and Presidency. Talk to be delivered on October 15, 2010 at the "Politics of Race, Ethnicity, and Immigration Consortium" (PREIC) conference at the University of New Mexico in Albuquerque, NM.

Contracts. Grants, and Sponsored Research

- Block Jr., Ray, "CLS Small Grant", $3,350.00. (February 15, 2011 - September 9, 2011).

Departmental, College, Community, and Professional Service

Department Service

- CLS General Education Assessment, Member. (September 30, 2010 - Present).
- Political Science and Public Administration Search and Screen Committee, Member. (August 30, 2010 - Present).

College Service

- The "Confluence of Four" (C4) Working Group, Co-Founder. (August 17, 2010 - Present).
- CLS Graduate School Night, Department Representative. (October 6, 2010).

University Service - Administrative Assignments

- Upward Bound search and screen committee member. (December 6, 2010 - April 1, 2011).

Community Service Presentations

- Block Jr., R. (Co-Presenter), Medinger, J. (Co-Presenter), "The ABC's of Redistricting", La Crosse Public Library, League of Women Voters. (February 23, 2011).

General Professional Service

- Professional, National Conference of Black Political Science, Task Force Member, Panelist, approximately 10 hours spent for the year, No, neither, Pro Bono, National. (March 16, 2011 - March 20, 2011).

Editorial and Review Activities

- Ad Hoc Reviewer, Papers, "Politicized Ethnicity and Electoral Campaigns in New York," Annual Review of Political and Military Sociology, 1 review. (December 21, 2010 - January 31, 2011).
- Ad Hoc Reviewer, Papers, "Uncle Tom: Race, Law, and Culture," Cambridge University Press (New York), 3 reviews. (September 28, 2010 - October 28, 2010).
- Ad Hoc Reviewer, Papers, "Achieving Validation: Barack Obama and Black Turnout in 2008," Political Behavior, 1 review. (August 23, 2010 - September 26, 2010).

Report on Radically Polarized Boting in North Carolina

June 14, 2011

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Senior Associate Dean of Graduate Education
University of Texas at Dallas[1]

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[1] The opinions expressed in this report are solely my own and do not necessarily represent those of the University of Texas at Dallas or the state of Texas.

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1. Introduction

I was asked by the Chairs of the North Carolina House and Senate Redistricting Committees to supplement and review the results of the analysis done by Professor Block (included in Anita Earls' testimony) regarding racially polarized voting in North Carolina. I assessed the extent to which racially polarized voting was present in recent elections in 51 counties in North Carolina. In this report I examine the 40 counties covered by Section 5 of the VRA, along with 11 other counties: Columbus, Duplin, Durham, Forsyth, Jones, Mecklenburg, Richmond, Sampson, Tyrrell, Wake, and Warren,

I am a Professor of Political Science and the Senior Associate Dean of Graduate Education at the University of Texas at Dallas. I received my Ph.D. in political science from the University of California, Irvine in 1997. I specialize in Issues revolving around elections, representation, and redistricting. I have published dozens of articles on these issues in peer-reviewed Journals and have also published a book in 2008 called Redistricting and Representation: Why Competitive Elections are Bad for America. I have served as a consultant and/or expert witness in redistricting and Voting Rights Act related litigation numerous times, I have testified in federal and state courts around the country concerning these Issues.

2. Executive Summary

I found the analysis by Professor Block and the testimony from Anita Earles very useful and a good overview about the presence of racially polarized

voting. I wanted to conduct more analyzing, using methods that are more straightforward and understandable than the ecological inference tool. I also wanted to look at counties specifically, which is the reason for the analysis below. I find statistically significant racially polarized voting in 50 of the 51 counties of interest, Camden County simply does not have enough precincts to enable me to make a similar determination,

3. Methods for detecting racially polarized voting

The first approach to discerning if racially polarized voting exists is to conduct extreme cases analysis (also called homogenous precinct analysis). Since we do not have data on how individuals vote we must use other methods to see if the different races tend to vote for candidates from their own racial background. Voting tabulation districts[2] (VTDs) are the smallest unit for which we can get reliable voting results, which is to say we do not know how individuals voted. If some of these VTDs were composed of 100 percent Whites or 100 percent Blacks then would we have some direct evidence as to how these two different groups vote. Most precincts are not this homogenous so we typically pick those VTD (voting tabulation districts) that are comprised of over 90 percent of one racial category.

Next we turn to scatterplots and regression analysis. These methods are complementary to extreme cases analysis in that all VTDs are used, not just those with a high degree of homogeneity. For both of these methods, the analyst uses several key pieces of data from each VTD in the dataset. First, the percentage of vote received by the black candidate. The second is the

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[2] I use the terms VTDs and precincts interchangeably throughout this document.

percentage of the population, or the voting population in the case of North Carolina, that is composed of African American voters. The scatterplot plots all of the available datapoints for these two variables, When voting is racially polarized one expects a positive correlation, which, in graphical form, shows up with the points in the graph sloping upward from left to right. In the bivariate regression the analyst produces the equation for the "best fitting line" through the data for these two variables. The equation for a line is the familiary=mx+b. In this case y is the percent of the vote received by the African American candidate, m is the slope of the line, which can be interpreted as the percent of the vote difference we expect for the black candidate if x is increased by 1. In this case x is the percentage of voters in the precinct that are Black. So for every 1 percent increase in Black voters we expect the percentage of vote for the black candidate to go up by m. The constant or y-intercept of the line is b. For our purposes here, this is useful because it can be interpreted as the percent of the vote we expect the black candidate to get, on average, in VTDs in which there are no Black voters, So m is zero; when x is multiplied times zero the only term left in the equation is the constant term b.

Throughout this report I refer to "statistical significance" in the sense that the tests that I run (regressions, etc.) also give an estimate for how likely it is that these results would be obtained by chance alone. If the estimates less than 5% ($p<.05$) then I conclude that the results are statistically significant. This is the standard level in modern social sciences. Typically the results are even more significant, $p<.001$, Indicating an even higher level of confidence in the results.

4. Data

North Carolina is one of a handful of states that reports voter registration and turnout by party and by race. Therefore, the source data for this review originated with the NC State Board of Elections (SBOE). The data provided by the SBOE consisted of both election results and individual voter registration and voter turnout summarized by race and by party for precincts.[3] When 1 say "voter" I mean people who actually voted in the election.

In addition, matching the appropriate precinct across each of the three datasets (election results by candidate, voter registration by race, and voter turnout by race) presented extra work. A review of the matching process indicated some improbable, if not impossible, cases. For example, too many voters based upon the count of registrants, The observation was excluded from the analysis if the data items were likely to represent some improbable results, Absentee, and other similar votes, that were not redirected to the registration precinct for tabulation are excluded from the dataset. The manner by which these were tabulated varied by county and by year.

There are a variety of elections to pick from to conduct these analyses, To begin with, I have several statewide elections that allow me to look for the presence of racially polarized voting in all 51 of the relevant counties, While it is easy to produce scatterplots for each of these elections for each county, the graphs would take up dozens of pages of text, so I have

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[3] The data for party registration by race was run using Blacks and non-Blacks. If there are a significant number of voters in an area that are neither White nor Black, then the estimates for the Whites voting patterns may be affected.

omitted them to save space. Graphs for individual counties for different elections appear below.

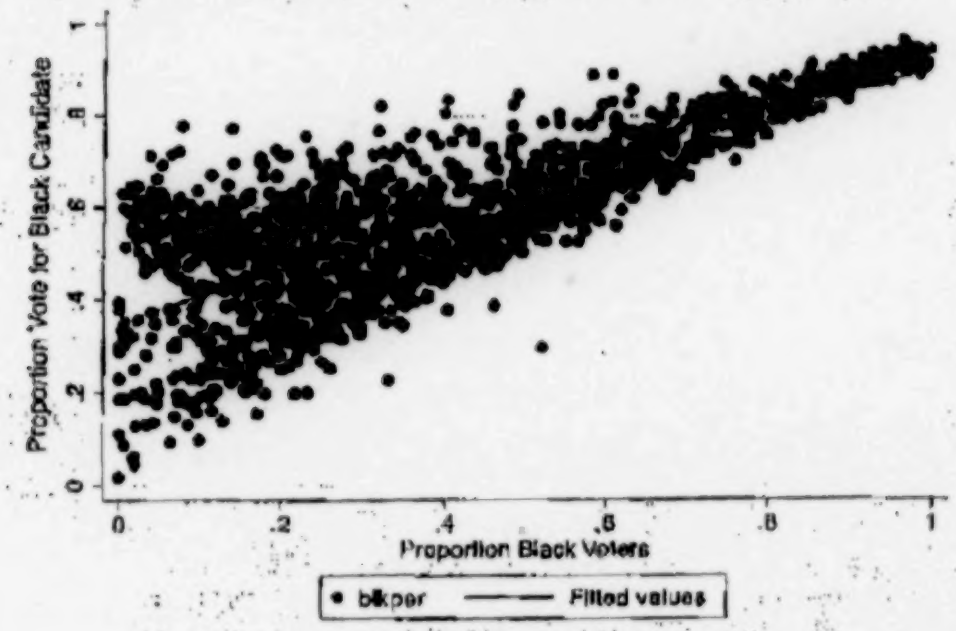
5. 2008 Democratic Primary Election

This election was a statewide race between Hillary Clinton and Barack Obama for the nomination of their party for President.

For the homogeneous precincts across all 51 counties for this election, there were 97 in which the proportion of voters that were African American exceeded 9 out of 10. In these VTDs the Black candidate averaged 92.0 percent of the vote (minimum was 91.5, and the maximum was 92.3). In the 161 precincts in which Black comprised less than 10 percent of votes cast, the black candidate averaged 43.8 percent of the vote (minimum was 41,1, and the maximum was 46.4). This clearly indicates statistically significant racially polarized voting as these differences are significant at $p<.001$.

The scatterplot in Figure 1 confirms that voting was racially polarized. As we move from the left side of the graph, where the proportion of voters that are Black is low, most of the votes are going to Senator Clinton, the white candidate, However, the spread of the data points here is rather wide, Indicating some cross-over voting (White voters cast who a ballot in favor of the Black candidate). Moving rightward, the proportion of voters that are black increases and so does the proportion of the vote captured by then-Senator Obama. On the far right side of the graph the spread of the data points is very tight, which shows the very high level of support among Black voters of Obama.

Figure 1. 2010 Democratic Primary in North Carolina (51 counties)



The county-by-county regression analysis appears below in Table 1, 1 use the data for all matched VTDs in the dataset, not just homogeneous precincts. Since we are interested in the presence of racial bloc voting in specific counties, these analyses were running separately for each of the 51 counties in question. The dependent variable is the percent of the two-party vote received in each VTD by President Obama. The independent variable is the percentage of voters in each VTD who are black. The table lists the coefficient for the Black Voter percentage for each county and the constant. I also list the number of observations for each county (the number of matched VTDs in the dataset) and the R-squared which is a measure of how well the black voting percentage explains the variance in the percentage of votes for President Obama. This number can range from 0 to 1.0, with numbers closer to 1.0 indicating a excellent linear relationship between these two variables. A positive sign on the coefficient for the Black Voter percentage

indicates that as the proportion of voters who are black in a precinct increases, so does the percentage of the votes for President Obama. Virtually every county examined demonstrates typical patterns of statistically significant racially polarized voting. The constants in all of the counties, save two (Durham and Wake) are below 50, which indicates that the estimates are that a majority of the White voters favored the White candidate. Also the slope coefficient under Black Voter % is positive and statistically significant in all counties except Camden. Camden is exceptional insofar as there are only three VTDs in the county, which does not lend itself to a finding of statistical significance.

Table 1. 2008 Democratic Presidential Primary Election Racial Bloc Voting Analysis

County	Black Voter %	Constant	Number of Observations	R-sq
Anson	.837***	12.0***	11	.99
Beaufort	.683***	26.5***	21	.88
Bertie	.884***	8.8***	12	.99
Bladen	.885***	10.8***	17	.97
Camden	.683	44.8	3	.84
Caswell	.658***	26.8***	11	.96
Chowan	.915***	16.1**	6	.95
Cleveland	.835**	15.6***	28	.97
Columbus	.909***	4.3***	21	.98
Craven	.545***	34.4***	27	.66
Cumberland	.713***	24.4***	48	.96
Duplin	.898***	9.8***	19	.95
Durham	.345***	59.2***	55	.70
Edgecombe	.821***	13.3***	21	.99
Forsyth	.477***	45.3***	101	.84
Franklin	.683***	23.8***	18	.82
Gaston	.753***	21.1***	46	.90
Gates	.932***	10.8*	6	.96
Granville	.676***	26.6***	15	.94
Greene	1.01***	4.7	10	.93
Guilford	.468***	46.2***	157	.83
Halifax	.806***	14.5***	30	.96
Harnett	.770***	18.2***	13	.93
Hertford	.834***	11.7**	13	.97
Hoke	.726***	23.2***	13	.91
Jackson	2.85**	31.5***	13	.45
Jones	.845***	12.5***	7	.98
Lee	.667*	24.4*	5	.85
Lenoir	.788***	15.5***	22	.98
Martin	.845***	12.9***	13	.98
Mecklenburg	.445***	48.0***	194	.89
Nash	.794***	17.7***	26	.95
Northampton	.867***	9.6*	18	.95
Onslow	.742***	26.0***	23	.91
Pasquotank	.719***	25.3***	13	.97
Perquimans	.568**	26.6**	7	.72
Person	.723***	21.9***	14	.94
Pitt	.592***	33.1***	38	.83
Richmond	.868***	13.2***	16	.95
Robeson	.849***	10.9***	39	.93
Rockingham	.746***	20.9***	17	.96

County	Black Voter %	Constant	Number of Observations	R-sq
Sampson	.836***	11.8***	23	.98
Scotland	.744***	21.4***	10	.96
Tyrrell	.717***	.179***	6	.98
Union	.668***	28.6***	49	.70
Vance	.748***	20.0***	16	.99
Wake	.411***	50.6***	188	.76
Warren	.643***	29.0***	14	.72
Washington	.855***	13.3**	6	.99
Wayne	.784***	18.8***	30	.96
Wilson	.746***	20.6***	24	.97

Note: the asterisks indicate levels of statistical significance for the two coefficients in each regression * indicates p<.05, ** p<.01, *** p<.001. Any asterisk indicates statistical significance; more asterisks indicate lower levels of uncertainty.

6 2008 Presidential General Election

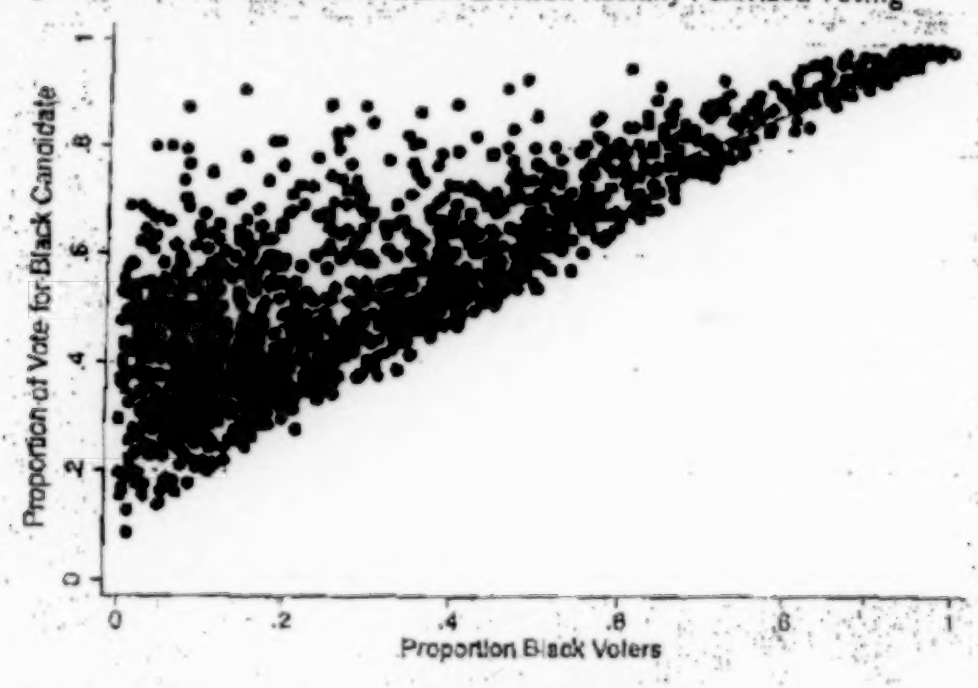
The most recent presidential election is a good data point to investigate whether racially polarized voting exists in North Carolina, The candidates were Barack Obama and John McCain, Elections that have an African American running against a White candidate are the best elections to look for bloc voting.

Homogeneous Precincts

For this election, in the 51 counties of interest, there are 358 VTDs that have less than 10 percent Black voting percentage in which the African American candidate averaged 39.7 percent of the vote. In the 64 VTDs that are predominantly Black, the Black candidate averaged 97.8 percent of the vote. The difference is statistically significant at p<.001. This clearly indicates statistically significant racially polarized voting.

The scatterplot in Figure 2 is also indicative of statistically significant racially polarized voting because of the clustering of the dots and the positive slope of the red line in the graph.

Figure 2. 2008 Presidential General Election Racially Polarized Voting



Next, I conducted bivariate regression analysis to look the linear relationship between percent black voters in a VTD and percent of the vote for the African American candidate. All of the coefficients below are positive. The constant can be interpreted as the percent of the vote that President Obama receives when the percentage of African American voters in that county is zero. So for Anson County, for instance, President Obama would receive, on average, 22.6 percent of the vote from a precinct that had zero black voters. For every 10-percentage point increase in the black voters in a precinct, we expect President Obama to receive 7.92 percent votes. These results are typically of statistically significant racially polarized voting.

There are some counties, like Wake, Durham, Jackson, Mecklenburg, in which there is a considerable amount of white cross-over voting for President Obama, All four of these have a constant of at least 40,

and Durham's constant is 59.4. There are five homogeneous precincts in Durham that have less than 10 percent African American voters. In these districts the average vote percent for Obama is 69.6 percent. Thus at least for the 2008 presidential election, it appears that in Durham County a majority of both White and Blacks supported President Obama.

In Mecklenburg County, the homogenous precincts that are less than 10 percent Black, a majority of voters supported McCain (roughly 56 percent), so voting is racially polarized in Mecklenburg County. In Wake County, voting is also polarized, though it is quite close inasmuch as in the homogeneous precincts, there was a bare majority of support for McCain (51.3). In Jackson County, the homogeneous precincts also indicate majority non-black support for President Obama (52.7 percent).

Jackson County has a very large coefficient for Black Voter % in large part because there are so few African Americans in that county.

Table 2. 2008 Presidential Election Racial Bloc Voting Analysis

County	Black Voter %	Constant	Number of Observations	R-sq
Anson	.792***	22.6***	11	.97
Beaufort	.453***	5.4***	21	.89
Bertie	.94***	10.3***	12	.99
Bladen	.910***	14.8***	17	.99
Camden	.427	27.1*	3	.86
Caswell	.901***	20.9***	10	.98
Chowan	.883***	22.6***	6	.94
Cleveland	.877***	20.1***	28	.96
Craven	.749***	26.1***	27	.85
Cumberland	.823***	24.0***	37	.97
Durham	.413***	59.4***	53	.49
Edgecombe	.879***	14.5***	21	.99
Forsyth	.689***	36.1***	101	.85
Franklin	.723***	28.4***	18	.93
Gaston	.825***	24.3***	46	.91
Gates	.843***	21.9***	6	.99
Granville	.755***	26.5***	15	.95
Greene	.906***	12.8**	9	.92
Guilford	.667***	37.3***	152	.82
Halifax	.815***	21.0***	30	.86
Harnett	.784***	23.2***	13	.90
Hertford	.859***	18.0***	13	.93
Hoke	.795***	25.1***	12	.86
Jackson	2.24*	48.0***	10	.43
Lee	N/A			
Lenoir	.869***	14.5***	22	.99
Martin	.861***	15.4***	13	.98
Mecklenburg	.639***	41.9***	195	.89
Nash	.924***	15.8***	26	.98
Northampton	.813***	18.6***	18	.98
Onslow	.830***	22.1***	22	.91
Pasquotank	.822***	24.4***	13	.96
Perquimans	.677**	26.9***	7	.86
Person	.876***	20.5***	14	.97
Pitt	.704***	30.9***	38	.76
Robeson	.599***	37.8***	41	.63
Rockingham	.816***	24.8***	16	.96
Scotland	.768***	26.7***	10	.98

Union	.903***	25.1***	48	.88
Vance	.831***	19.9***	16	.99
Wake	.569***	45.8***	188	.68
Washington	.979***	10.0**	6	.99
Wayne	.902***	14.6***	30	.99
Wilson	.821***	19.6***	24	.98

Note: the asterisks indicate levels of statistical significance for the two coefficients in each regression. * indicates p<.05, ** p<.01, *** p<.001. Any asterisk indicates statistical significance; more asterisks indicate lower levels of uncertainty.

7. 2004 State Auditor General Election

This election is useful as it provides another look at a general election that had a Black candidate (Ralph Campbell) facing off against a White opponent (Leslie Merritt),

Homogeneous Precincts

There are 70 VTDs in the dataset in which Blacks make up 90 percent or more of the voting population - the Black candidate averaged 96.3 percent of the vote in these VTDs. In the 407 VTDs in which Black comprise 10 percent or less of the voting population, the Black candidate averaged just 39.3 percent of the vote, The difference is indicative of racially polarized voting and Is significant at p<,001.

The scatterplot in Figure 3 also indicates the presence of significant racially polarized voting.

Figure 3. 2004 State Auditor General Election Racially Polarized Voting

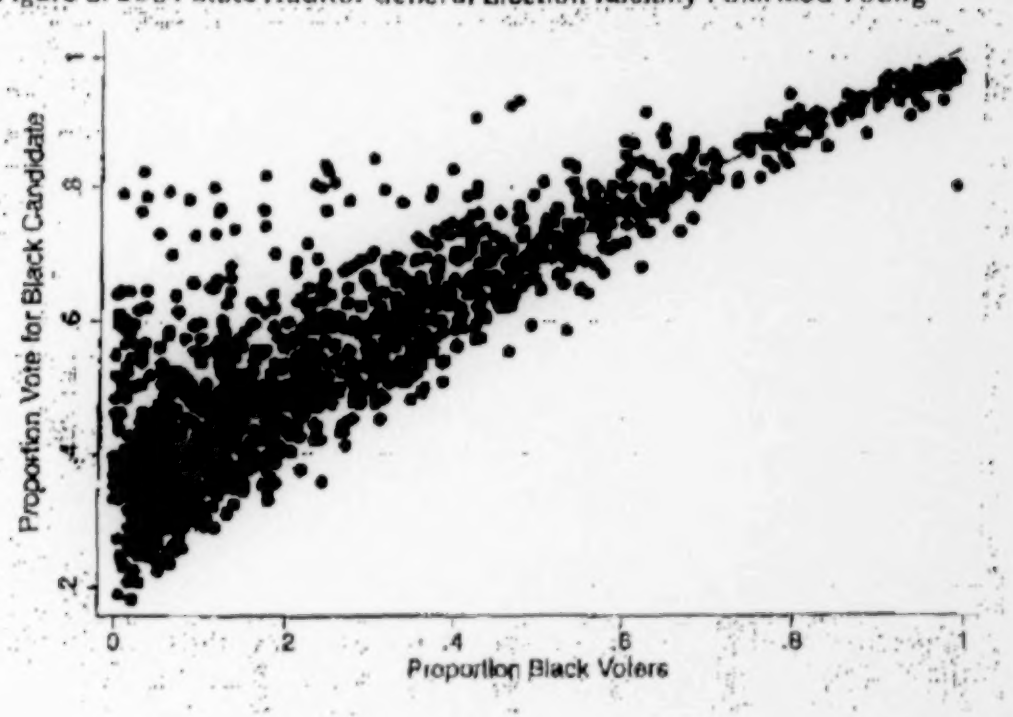


Table 3 has the results of the county-by-county regression analysis. Not surprisingly, it too shows that for virtually every county, there is statistically significant racially polarized voting. Durham and Robeson are borderline cases, in which voting is polarized, but there is a good deal of White cross-over voting. Camden and Gates counties have too few observations for meaningful analyses.

Table 3. 2004 State Auditor Election Racial Bloc Voting Analysis

County	Black Voter %	Constant	Number of Observations	R-sq
Anson	.619***	43.0***	8	.89
Beaufort	.869***	29.1***	20	.92
Bertie	.688***	34.8***	11	.97
Bladen	.613***	45.1***	15	.92
Camden	N/A		2	
Caswell	.728***	37.8***	11	.82
Chowan	.702***	34.5***	4	.90
Cleveland	.877***	20.1***	28	.78
Craven	.785***	27.8***	18	.94
Cumberland	.629***	33.5***	64	.93
Durham	.514***	50.0***	32	.76
Edgecombe	.633***	37.4***	21	.96
Forsyth	.654***	34.1***	101	.84

County	Black Voter %	Constant	Number of Observations	R-sq
Franklin	.833***	33.5***	17	.89
Gaston	.754***	26.8***	46	.85
Gates	.259	54.3***	5	.25
Granville	.819***	34.2***	14	.89
Greene	1.00***	23.8***	10	.76
Guilford	.674***	34.8***	115	.85
Halifax	.616***	40.6***	30	.88
Harnett	.666***	35.3***	22	.69
Hertford	.598***	39.2***	13	.94
Hoke	.784**	30.5**	11	.66
Jackson	3.40*	48.4***	18	.19
Lee	.636***	39.2***	13	.80
Lenoir	.733***	28.2***	21	.97
Martin	.609***	40.8***	13	.88
Mecklenburg	.711***	31.6***	180	.90
Nash	.821***	28.8***	24	.94
Northampton	.537***	46.9***	18	.87
Onslow	.608***	27.9***	23	.75
Pasquotank	.600***	42.1***	6	.89
Perquimans	1.08*	27.1*	6	.64
Person	.728***	36.6***	6	.98
Pitt	.627***	36.2***	38	.80
Robeson	.322***	61.7***	41	.26
Rockingham	.637***	37.0***	30	.90
Scotland	.646***	43.0***	7	.93
Union	.858***	22.1***	35	.85
Vance	.613***	41.2***	13	.96
Wake	.595***	40.3***	181	.71
Washington	.812***	33.8**	6	.95
Wayne	.784*	29.3*	3	.99
Wilson	.696***	32.4***	24	.97

Note: the asterisks indicate levels of statistical significance for the two coefficients in each regression. * indicates p<.05, ** p<.01, *** p<.001. Any asterisk indicates statistical significance; more asterisks indicate lower levels of uncertainty.

8. Specific County and District Analyses

Since some of the results for several counties above had estimates for the constant term that were greater than 50, I chose to do some follow-up analyses. These are all non-statewide elections in specific State Senate districts, State House districts, or counties.

9. Durham County

Sheriff Election 2010 Democratic Primary

This primary election had a Black candidate (Tony Butler) running against a White candidate (Worth Hill). Mr. Hill won the election.

Homogeneous Precincts

There are 7 VTDs in the data in which black voters make up 90 percent of the voters or better, in these districts the African American candidate received an average of 70,5 percent of the vote. There are 4 precincts with less than 10 percent black voters and In these districts the black candidate received an average of 10.1 percent of the vote, This indicates significant racially polarized voting with statistical significance at the $p<.001$ level.

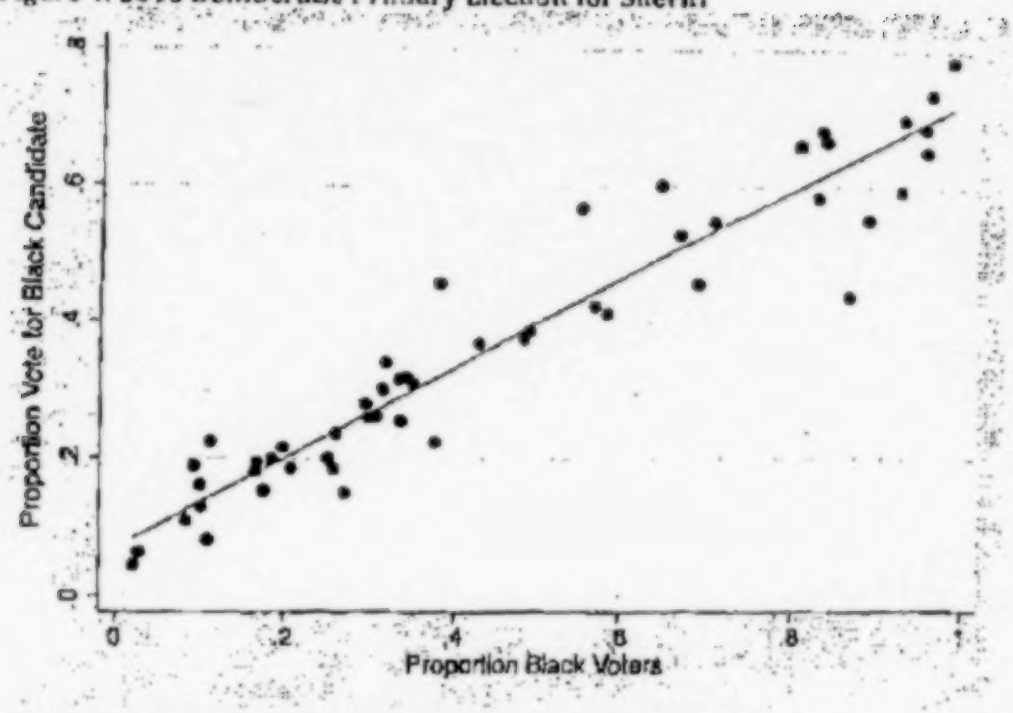
Bivariate Regression Analysis

The equation for this relationship is:

Percentage vote for Black candidate = 6.3 percent + .684 (Black voter percentage). The number of observations is 52, and the R-squared is .93. The analysis weighted each observation by the total number of votes in each VTD. The results are statistically significant and indicate racial bloc voting.

The graph below depicts the linear relationship between proportion black in a precinct and the proportion of vote the black candidate received in this election. There is clearly a linear relationship and it is statistically significant. Voting is racially polarized in Durham County for this election.

Figure 4. 2010 Democratic Primary Election for Sheriff



Senate District 20 2010 General Election

The general election in Senate District 20 in 2010 pitted a Black Democrat (Floyd B, McKissick, Jr.) versus a White Republican (John Tarantino). This provides another opportunity to see if racial bloc voting exists In Durham County.

Homogeneous Precincts

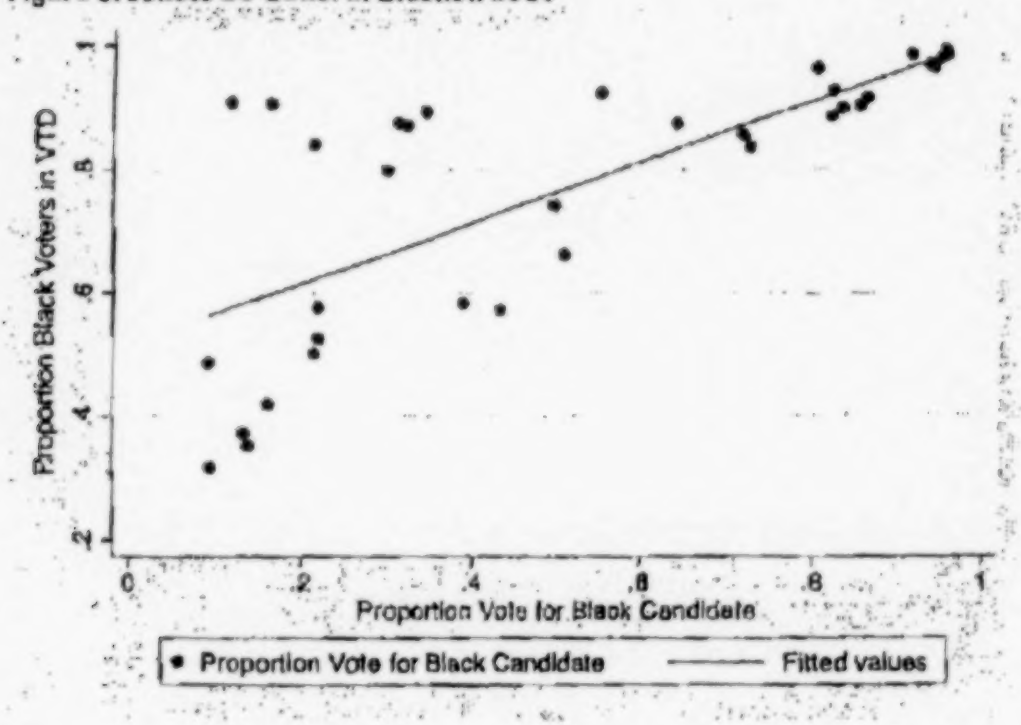
There are 6 VTDs in the data in which black voters make up 90 percent of the voters or better, in these districts the African American candidate received an average of 97.8 percent of the vote. There are 2 precincts with less than 10 percent black voters and in these districts the black candidate received an average of 40.1 percent of the vote. This indicates significant racially polarized voting with statistical significance at the $p<.001$ level.

The equation for this relationship is:

Percentage vote for Black candidate = 45.3 percent + .561(Black voter percentage). The number of observations is 36, and the R-squared is .61. The analysis weighted each observation by the total number of votes in each VTD. The results are statistically significant and indicate racial bloc voting.

The graph below depicts the linear relationship between proportion black in a precinct and the proportion of vote the black candidate received in this election. There is a linear relationship between the variables and this relationship is statistically significant. Voting is racially polarized in Durham County for this election.

Figure 5. Senate 20 General Election 2010



10. Wake County

Board of Commissioners District 1

In 2010 an election for the Board of Commissions in Wake County pitted a Black Democrat (Don Mial) versus a White Republican (Joe Bryan).

Homogeneous Precincts

In the 81 VTDs that had less than 10 percentage of the votes cast by Blacks, the Black candidate averaged 39.5 percent of the vote. In the 5 VTDs that had over 90 percent of the votes cast by Blacks, the Black candidate averaged 96.5 percent of the vote. The difference in the averages is statistically significant at $p<.001$, indicating statistically significant racially polarized voting.

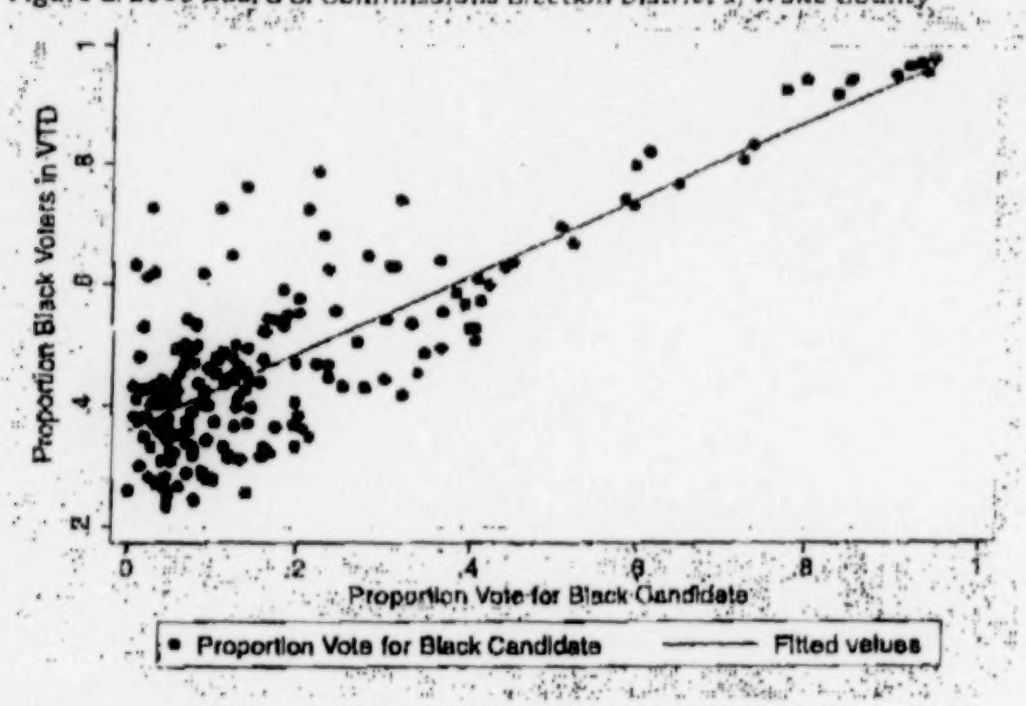
Bivariate Regression Analysis

The equation for this relationship is:

Percentage vote for Black candidate = 34.0 percent + .657 (Black voter percentage). The number of observations is 188, and the R-squared is .70. The analysis weighted each observation by the total number of votes in each VTD. The results are statistically significant and indicate racial bloc voting.

The graph below depicts the linear relationship between proportion black in a precinct and the proportion of vote the black candidate received in this election. There is clearly a linear relationship and it is statistically significant Voting is racially polarized in Wake County for this election.

Figure 6. 2010 Board of Commissions Election District 1, Wake County



Board of Commissioners District 2

In 2010 an election for the Board of Commissions in Wake County pitted a Black Democrat (Lindy Brown) versus a White Republican (Phil Matthews).

Homogeneous Precincts

In the 81 VTDs that had less than 10 percentage of the votes cast by Blacks, the Black candidate averaged 43.0 percent of the vote. In the 5 VTDs that had over 90 percent of the votes cast by Blacks, the Black candidate averaged 97.0 percent of the vote. The difference in the averages is statistically significant at $p<.001$, Indicating statistically significant racially polarized voting.

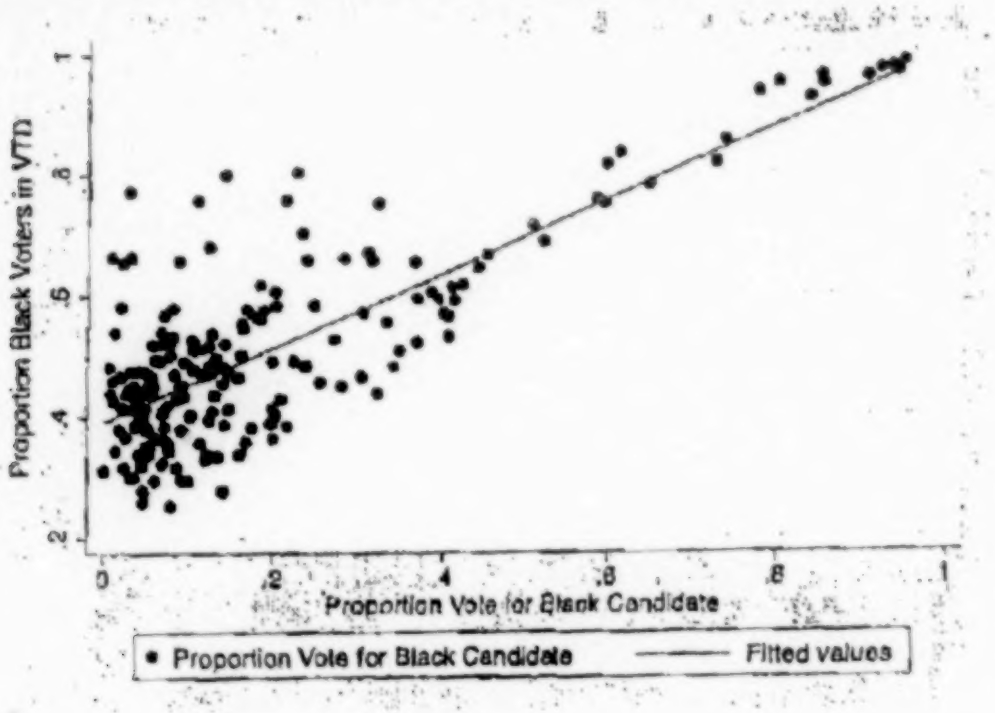
Bivariate Regression Analysis

The equation for this relationship is:

Percentage vote for Black candidate = 37.3 percent + .625 (Black voter percentage). The number of observations is 188, and the R-squared is .67. The analysis weighted each observation by the total number of votes in each VTD. The results are statistically significant and indicate racial bloc voting.

The graph below depicts the linear relationship between proportion black in a precinct and the proportion of vote the black candidate received in this election. There is clearly a linear relationship and it is statistically significant. Voting is radically polarized in Wake County for this election.

Figure 7. 2010 Board of Commissions Election District 2, Wake County



11. Senate District 5 — 2010 General Election

Don Davis, a Black Democrat ran against Louis M. Pate, a White Republican in this election. The data demonstrate statistically significant racially polarized voting was present in this election.

Homogeneous Precincts

In the 3 VTDs that had less than 10 percentage of the votes cast by Blacks, the Black candidate averaged 40.7 percent of the vote, In the 2 VTDs that had over 90 percent of the votes cast by Blacks, the Black candidate averaged 93.9 percent of the vote.

The difference in the averages is statistically significant at $p<.01$, indicating statistically significant racially polarized voting.

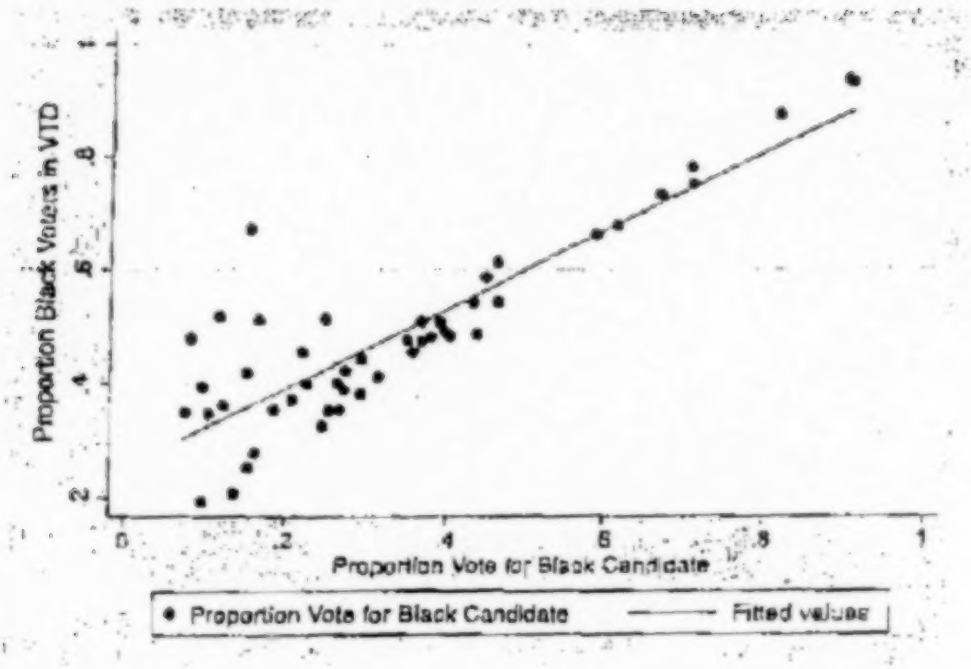
Bivariate Regression Analysis

The equation for this relationship is:

Percentage vote for Black candidate = 22.7 percent + .727 (Black voter percentage). The number of observations Is 49, and the R-squared Is .79. The analysis weighted each observation by the total number of votes in each VTD. The results are statistically significant and indicate racial bloc voting.

The graph below depicts the linear relationship between proportion black in a precinct and the proportion of vote the black candidate received in this election. There is clearly a linear relationship and it is statistically significant. Voting is racially polarized in this election and the results are statistically significant.

Figure 8. 2010 Senate District 5 General Election



12. 2006 General Election in State House District 60

This is a Guilford County example of racially polarized voting. This election pitted a Black Democrat, Earl Jones against a White Republican, Bill Wright

Homogeneous precincts

There are three precincts in the data that have an African American voter population of 90 percent or greater. In each of these VTDs the percentages of votes for the Black candidate were greater than 90 percent (92.5, 93.7, and 96.3). There are four VTDs with non-Black population of 90 percent or greater and the vote percentages for the Black candidate were: 20.9, 15.9, 19.1, and 12.2.

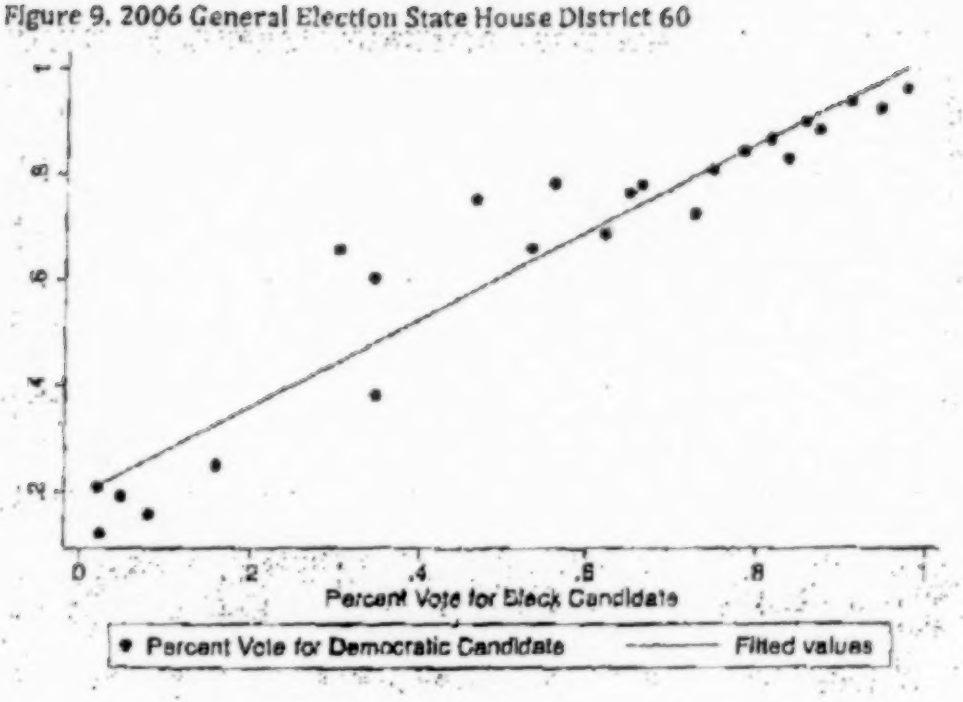
Bivariate Regression

The equation describing the linear relationship between percent whites voting in a precinct and the percent of votes for White Candidates Is

Percent votes for Black candidate = .870 (Percent Blacks in Precinct) + 15.8.

The coefficients for both the constant and the percent Blacks in precinct are statistically significant (respective t-values of 5.12 and 16.8). There are 24 observations in the analysis and the R-squared is .92. So for every ten-percentage point increase in the Black population in a district, we expect the percentage of votes in a district for Black candidate to increase by 8.70 points. The scatter-plot below is a graphical representation of this relationship. There is a strong linear relationship between the percent African American in a precinct and the percentage of votes received by the Black Democratic candidate. Voting is clearly racially polarized in Guilford County.

Figure 9. 2006 General Election State House District 60



13. Mecklenburg County

To further probe for the presence of racial bloc voting in Mecklenburg County I analyzed a Democratic state primary from 2010 that had two White candidates (Becky Carney and Ken Davies) and one African American candidate (Kim Ratliff). For the purposes of this analysis I grouped votes for the two white candidates into one variable.

Homogeneous Precincts

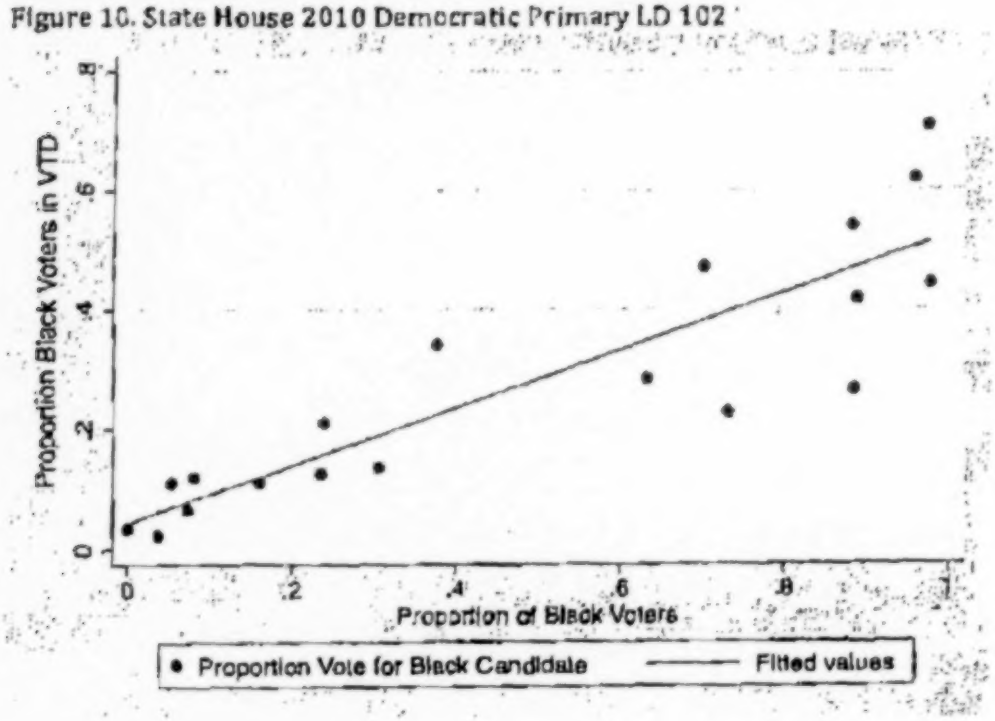
There are 3 VTDs in the data in which black voters make up 90 percent of the voters or better, in these districts the African American candidate received an average of 59.1 percent of the vote. There are 5 precincts with less than 10 percent black voters and in these districts the black candidate received an average of 7.1 percent of the vote. This indicates significant racially polarized voting.

Bivariate Regression Analysis

The equation for this relationship is:

Percentage vote for Black candidate = 4.1 percent + .495(Black voter percentage). The number of observations is 19, and the R-squared is .78. The analysis weighted each observation by the total number of votes in each VTD. The results are statistically significant and indicate racial bloc voting.

Figure 10. State House 2010 Democratic Primary LD 102



14. Robeson County

As a follow-up for Robeson County, I looked at the 2008 Democratic Primary election for state Senate District 13, which pitted David Weinstein (White) against R. Benjamin Clark (Black). David Weinstein won the election with 61.1 percent of the vote. I should note that some of these precincts from this election are in Hoke County.

Homogeneous precincts

There is just one VTD with Black population of 90 percent or greater and the vote for the Black candidate was 80.8 percent. There are five VTDs in the dataset that had over 90 percent Black voters and the average percent of the vote for the Black candidate was 29.0 percent. No tests of statistical significance are possible since there is only one observation for the first category. The results do point to possible racially polarized voting however.

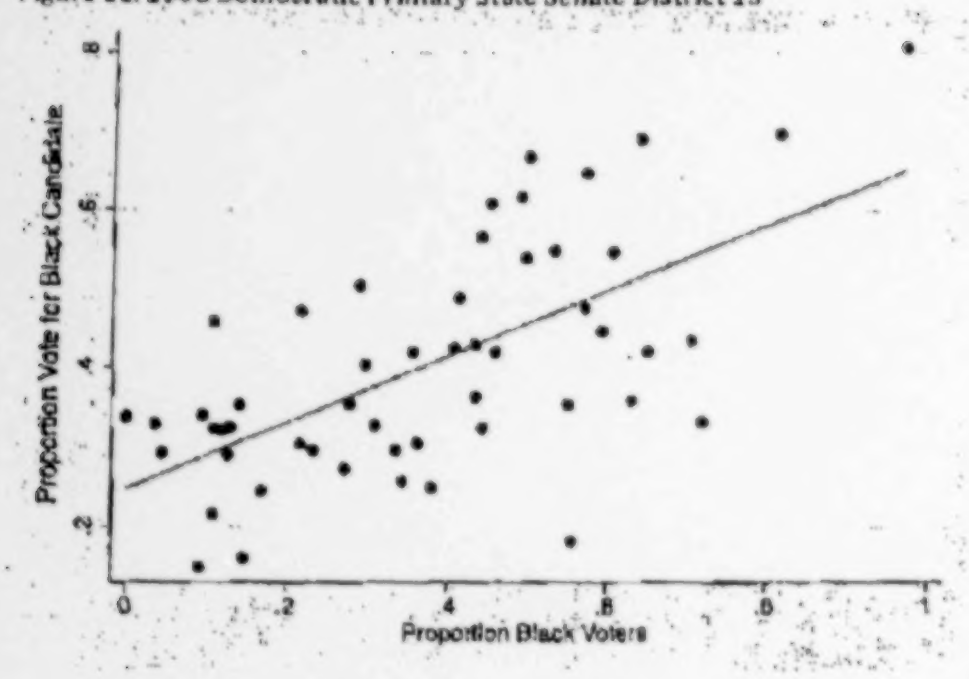
Bivariate Regression

The equation describing the linear relationship between percent whites voting in a precinct and the percent of votes for White Candidates is

Percent votes for Black candidate = .365(Percent Blacks in Precinct) + 25.2.

The coefficients for both the constant and the percent Blacks in precinct are statistically significant (respective t-values of 8.7 and 5.5). There are 52 observations in the analysis and the R-squared is .36. So for every ten-percentage point increase In the Black population in a district, we expect the percentage of votes in a district for Black candidate to increase by 3.65 points. The estimate for the constant, 25.2, indicates what we might expect the vote to be for the Black candidate in a precinct in which there are no Blacks at all. The scatter-plot below is a graphical representation of this relationship. There is a reasonably strong linear relationship between the percent African American In a precinct and the percentage of votes received by the Black Democratic candidate. These results indicate the presence of statistically significant racially polarized voting in Robeson County for this election.

Figure 11. 2008 Democratic Primary State Senate District 13



15. State Senate District 3

State Senate District 3 Democratic Primary 2010

This election pitted one White candidate (Clark Jenkins) against two African Americans (Florence Armstrong and Frankie Bourdeaux). Jenkins won the election with 49.7% of the vote.

Homogeneous precincts

There are six VTDs with Black population of 90 percent or greater and the vote percentages for the black candidates averaged 89.5 percent of the vote. There are two VTDs in the dataset that had less than 10 percent Black voters and the black candidates averaged 233 percent of the vote. The difference is statistically significant at $p<.001$. This indicates racially polarized voting.

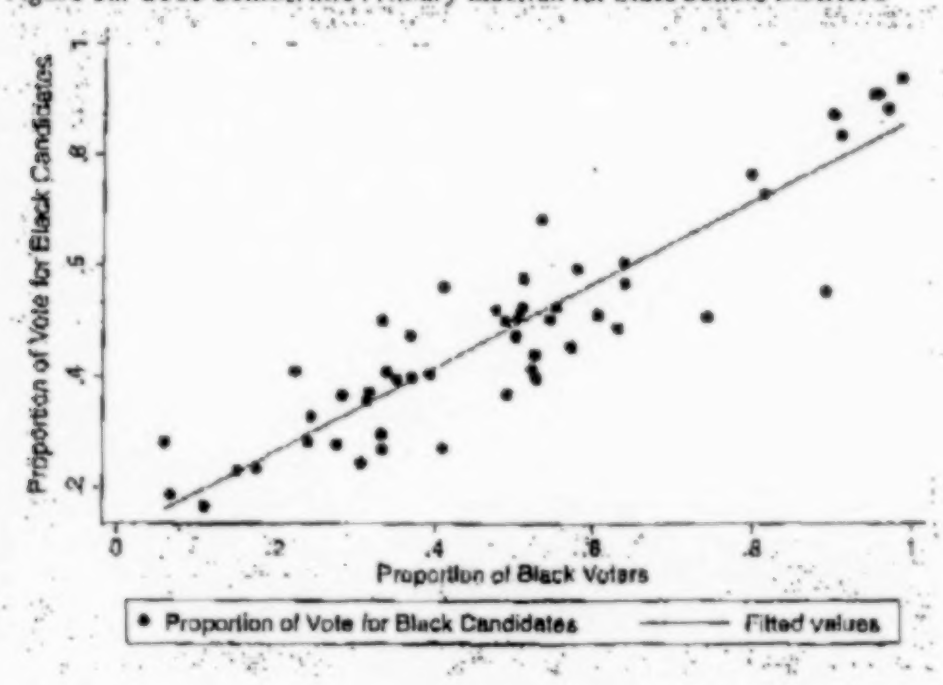
Bivariate Regression

The equation describing the linear relationship between percent Blacks voting in a precinct and the percent of votes for Black Candidates is

Percent votes for Black candidate = .742 (Percent Blacks in Precinct) + 11.8.

Both coefficients are statistically significant at $p<.001$. There are 53 observations in the analysis and the R-squared is .82. Again this indicates statistically significant racially polarized voting. The scatterplot below is also confirmatory of racial bloc voting.

Figure 12. 2010 Democratic Primary Election for State Senate District 3



16. Conclusion

The above analyses lead to a straightforward conclusion - for the 50 of the 51 counties I was asked to examine, there is clear evidence for the presence of statistically significant racially polarized voting in, at least, some of the elections examined, Camden County

simply does have enough data points for me to make a conclusion about it. For most of the counties, racially polarized voting is evident in all three statewide elections I analyzed. A few of the counties, like Wake, Durham, Mecklenburg, had enough white cross-over voting in some elections for the Black candidate to be the choice for both Black and White voters, This is the reason for the additional analyses of additional elections, which do demonstrate the presence of racially polarized voting In these counties as well.

1003

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Employment History

The University of Texas at Dallas. Professor, 2009-present.

The University of Texas at Dallas, Senior Associate Dean, 2010-present.

The University of Texas at Dallas, Director of Graduate Studies, Political Science Program 2007-2010.

The University of Texas at Dallas. Associate Professor, 2005-2009. Northern Arizona University, Assistant Professor of Political Science, 2003-2005. Binghamton University, SUNY. Assistant Professor of Political Science, Fall 1999-2003. American Political Science Association Congressional Fellow, 1998-1999. University of California, Irvine, Visiting Assistant Professor, 1997-1998.

Grants and Awards

Intramural Grants Program, Northern Arizona University. $5,000 for a study on the impact of redistricting on House elections. Summer 2004.

Deans Workshop Grant, "Methods and Politics," $3000, 2002-2003, with David Clark, David Rueda and Wendy Martinek.

Deans Workshop Grant, "Democratic Institutions, Preference Aggregation and World Politics," $4000, 2001-2002, with David Clark and Patrick Regan,

Dean's Research Semester Award. Binghamton University, 2001-2002, American Political Science Association Congressional Fellowship, 1998-99

Order of Merit, Outstanding Graduate Scholarship. School of Social Sciences, University of California, Irvine, 1996-1997

University of California Regents Dissertation Fellowship, Spring 1997.

Scaife Foundation Fellowship to attend ICSPR summer statistical program, 1993,

Books

Brunell, Thomas L. 2008, Redistricting and Representation: Why Competitive Elections are Bad for America, New York: Routledge,

Journal Articles

Merrill, Samuel, Bernard Grofman, and Thomas L. Brunell, "Do British Politics Exhibit Electoral Cycles?" *British Journal of Political Science*, forthcoming.

Brunell, Thomas L. and Harold Clarke, "Who Wants Electoral Competition and Who Wants to Win?" *Political Research Quarterly*, forthcoming.

Smith, David and Thomas L. Brunell. 2010. "Are Special Elections to the U.S. House a General Election Barometer?" *Legislative Studies Quarterly* 35(2): 283-297.

Lublin, David, Thomas L, Brunell, Bernard Grofman, and Lisa Handley. 2009, "Has the Voting Rights Act Outlived Its Usefulness? In a Word 'No'," *Legislative Studies Quarterly* 34(4): 525-554.

Adams, James, Thomas Brunell, Bernard Grofman, and Samuel Merrill, III, 2010, "Why Candidate Divergence Should be Expected to be Just as Great (or even Greater) in Competitive Seats as in Non-Competitive Ones." *Public Choice* 145: 417-433.

Brunell, Thomas L., Chetan Dave, and Nicholas C. Morgan. 2009. "Factors Affecting the Length of Time a Jury Deliberates: Case Characteristics and Jury Composition." *Review of Law & Economics*, 5(1): article 23.

Brunell, Thomas L. and Justin Buchler, 2009. "Ideological Representation and Competitive Congressional Elections." *Electoral Studies* 28(3): 448-457.

Brunell, Thomas L, and Bernard Grofman. 2009, "Testing Since Versus Strategic Split-ticket Voting at the Aggregate Level: Evidence from Split House-President Outcomes, 1900-2004," *Electoral Studies*, 28(1): 62-69.

Brunell, Thomas L., Christopher J. Anderson, and Rachel Cremona, 2008 "Descriptive Representation,

District Demography, and Attitudes Toward Congress Among African Americans." *Legislative Studies Quarterly*. 33(2): 223-244.

Merrill, Samuel, Bernard Grofman, and Thomas L. Brunell. 2008, "Cycles in American National Electoral Politics, 1854-2006: Statistical Evidence and an Explanatory Model." *American Political Science Review*, 102(1) 1-17.

Thomas L. Brunel', 2006. What to Do about Turnout Bias in American Elections? *The American Review of Politics*, 27(Fall): 255-260.

Brunel, Thomas L. 2006. "Rethinking Redistricting: How Drawing Uncompetitive Districts Eliminates Gerrymanders, Enhances Representation, and Improves Attitudes Toward Congress." *PS: Political Science & Politics*, 39(1) 77-86.

Brunel, Thomas L. 2005. "The Relationship Between Political Parties and Interest Groups: Explaining Patterns of PAC Contributions to Candidates for the U.S. Congress." *Political Research Quarterly*, 58: 681-688,

Solowiej, Lisa, and Wendy Martinek, and Thomas L, Brunel'. 2005. "Partisan Politics: 'The Impact of Party in the Confirmation of Minority and Female Federal Court Nominees." *Party Politics*, 11: 557-577.

Brunell, Thomas L. and John DiNardo, 2004. "A Propensity Score Reweighting Approach to Estimating the Partisan Effects of Full Turnout in American Presidential Elections." *Political Analysis* 12(1): 28-45.

Solowiej, Lisa and Thomas L. Braila. 2003. "The Entrance of Women to the U.S. Congress: The

Widow Effect." *Political Research Quarterly* 56(3): 283-292.

Brunell, Thomas L. 2001, "Why There is Still a Controversy About Adjusting the Census," *PS: Political Science & Politics*, 35(1, March): 85,

Brunell, Thomas L. 2001. "Census 2000 — Epilogue." *PS: Political Science* & 34 (4, December): 813-814.

Brunell, Thomas L. 2001, "Science and Politics in the Census." *SOCIETY* 39(1): 11-16.

Brunell, Thomas L. and Amihai Glazer, 2001. "Rational Response to Irrational Attitudes: The Level of the Gasoline Tax in the U.S. States," *The Journal of Policy Analysis and Management* 20(4): 761-764.

Brunell, Thomas L, 2000. "Redistricting in the 'Aughts': The Impact of Census 2000. *The American Review of Politics* 21 (Winter): 347-366.

Grofman, Bernard, William Koetzle, Samuel Merrill, and Thomas L. Brunell, 2001. "Changes in the Location of the Median Voter in the U.S. House of Representatives, 1963-1996." *Public Choice* 106:221-232.

Brunell, Thomas L. 2000. "Using Statistical Sampling to Estimate the U.S. Population: The Methodological and Political Debate Over Census 2000." *PS: Political Science & Politics*. 33(4, December): 775-782.

Brunell, Thomas L. 2000. "Rejoinder to Anderson and Fienberg." *PS: Political Science & Politics*. 33(4, December): 793-794.

Brunell, Thomas L. 2000. "Making Sense of the Census: It's Political." *PS: Political Science & Politics*. 33(4, December): 801-802.

Stone Sweet, Alec and Thomas L. Brunell, 2000, "The European Court, National Judges, and Legal Integration: A Researcher's Guide to the Data Set on Preliminary References in EC Law, 1958-98," *European Law Journal* 6(2): 117 - 127.

Stone Sweet, Alec and Thomas L. Brunell, 2000, "The European Court, National Judges, and Legal Integration." *Swedish Journal of European Law* 3(2):179-192.

Grofman, Bernard, William Koetzle, Michael McDonald, and Thomas L. Brunell, 2000. "A New Look at Split Ticket Outcomes for House and President: The Comparative Midpoints Model." *Journal of Politics* 62(1, February): 35-50.

Brunell, Thomas L. and William Koetzle. 1999. "A Divided Government Based Explanation for the Decline in Resignations from the U.S. Senate, 1834-1996." *Party Politics* 5(October, 4): 497-505.

Brunell, Thomas L. 1999. "Partisan Bias in U.S. Congressional Elections. Why the Senate is Usually More Republican than the House of Representatives." *American Politics Quarterly* 27 (July,3): 316-37.

Grofman, Bernard, Samuel Merrill, Thomas L. Brunell, and William Koetzle. 1999. "The potential electoral disadvantages of a catch-all party - Ideological variance among Republicans and Democrats in the 50 U.S. States." *Party Politics* 5 (April,2):199-210.

Brunell, Thomas L., William Koetzle, John DiNardo, Bernard Grofman, and Scott L. Feld. 1999, "The R2 = .93, Where Then Do They Differ? Comparing Liberal and Conservative Interest Group Ratings." *Legislative Studies Quarterly* 24 (February,1): 87-99.

Merrill, Samuel, Bernard Grofman, Thomas L. Brunell, and William Koetzle, 1999. "The power of ideologically concentrated minorities," Journal of Theoretical Politics 11(January,1):57-74.

Brunell, Thomas L. and Bernard Grofman. 1998. "Explaining Divided Senate Delegations 1788-1996: A Realignment Approach." *American Political Science Review* 92(June,2): 391-99,

Stone Sweet, Alec and Thomas L. Brunell. 1998. "Constructing a Supra-National Constitution: Dispute Resolution and Governance in the European Community." *American Political Science Review* 92(March,1): 63-81.

Stone Sweet, Alec and Thomas L. Brunell. 1998, "The European Court and the National Courts: A Statistical Analysis of Preliminary References, 1961-95." The Journal of European Public Policy 5(March): 66-97.

Grofman, Bernard, Thomas L. Brunel, and William Koetzle. 1998. "Why Gain in the Senate, But Midterm Loss in the House? Evidence from a Natural Experiment." *Legislative Studies Quarterly* 23(February): 79-89.

Grofman, Bernard, Thomas L. Brunell, and Janet Campagna. 1997. "Distinguishing the Difference Between Swing Ratio and Bias: the U.S. Electoral College." *Electoral Studies* 16(December,4):471-487

Grofman, Bernard, William Koetzle, and Thomas L. Brunell. 1997. "An Integrated Perspective on the Three Potential Source of Partisan Bias: Malapportionment, Turnout Differences, and the Geographic Distribution of Party Vote Shares." *Electoral Studies* 16(December, 4):457-470,

Brunell, Thomas and Bernard Grofman. 1997. "The 1992 and 1996 Presidential Elections: Whatever Happened to the Republican Electoral College Lock?" *Presidential Studies Quarterly Winter*:134-38,

Wuffle, A, Thomas Brunell, and William Koetzle. 1997. "Death Where is Thy Sting: The U.S. Senate as a Ponce (de Leon) Scheme." *PS: Political Science and Politics* 30 (1): 58-59.

Reprinted in the *Journal of Irreproducible Results* 1999. 44(5-6): 25-26.

Koetzle, William, and Thomas L. Brunell. 1996. "Lip-Reading, Draft-Dodging, and Perot-noia: The 1992 Presidential Campaign in Editorial Cartoons." *Harvard International Journal of Press/Politics* 1(4): 94-115.

Book Chapters and Other Articles

Brunell, Thomas L. "The presidential and congressional election In the USA, November 2008." *Electoral Studies*, 28(4): 322-325.

Brunell, Thomas L. and Bernard Grofman. "The Partisan Consequences of Baker v. Carr and the One Person, One Vote Revolution," in *Redistricting in Comparative Perspective*, Lisa Handley and Bernard Grofrnan, eds, Oxford: Oxford University Press.

Brunell, Thomas L. and Bernard Grofman, 2008, "Evaluating the Impact of Redistricting on District Homogeneity, Political Competition, and Political Extremism in the U.S. House of Representatives, 1962-2006," In *Designing Democratic Governments*, Margaret

Levi, James Johnson, Jack Knight, and Susan Stokes, eds. New York: Russell Sage Publications,

Grofman, Bernard and Thomas Brunel 2006. "Extending Section 5 of the Voting Rights Act: The Complex Interaction Between Law and Politics." In *The Future of the Voting Rights Act*, David Epstein, Rodolfo O, de in Garza, Sharyn O'Halloran, and Richard H. Pildes, eds. New York, NY: Russeli Sage Publications.

Brunell, Thomas L. 2004, "Seeking to Institutionalize a Partisan Electoral Advantage: The Battle Over the Census," *s*, Edited by Paul S. Herrnson and Colton C. Campbell. Upper Saddle River, New Jersey: Prentice Hall.

Brunell, Thomas L. 2001. "Congress and the Courts': The Strange Case of Census 2000." In *Congress Confronts the Court*, edited by Colton C. Campbell and John F. Stack, Jr,. Lanham, MD: Rowman and Littlefield Press.

Grofman, Bernard and Thomas L. Brunell, 2001. "Explaining the Ideological Differences Between the Two U.S. Senators Elected from the Same State: An Institutional Effects Model," Galderisi, Peter F., Marni Ezra, and Michael Lyons, eds. *Congressional Primaries and the Politics of Representation*. Lanham, MD: Rowman and Littlefield Press.

Other Publications and Community Involvement

Quoted in an Associate Press article "Vulnerable House Dems declare their independence," by Cristina Silva, September 25, 2010,

Appeared on *Think* with Krys Boyd on KERA Channel 13 (Dallas) talking about my book.

I wrote the feature op-ed for the Dallas Morning News on June 3, 2008. http://www.dallasnews.com/sharedcontent/dws/dn/opinion/viewpoints/stories/DN-brunell03ed1.ART.State.Edition1..45fe223.html

Quoted extensively in a Huffington Post story by Tom Edsali on political cycles. http://www.huffingtonpost.com/2008/06/24/obama-rides-the-wave n 108848,html

Appeared on local radio station (KRLD 1080 am) as a guest political commentator for a 3 hour election wrap up program for the Texas presidential primary election, March 4, 2008.

Was one of four invited speakers, including one member of Congress, at North Central Texas College's 2nd Annual Conference on American Leadership, April 12, 2008, where I spoke about redistricting and representation.

My research on cycles in American electoral politics was featured on Discovery's website http://dsc.discovery.com/news/2008/03/13/political-cycles.html

Quoted in Pittsburgh Tribune Review on Thursday March 27 about jury deliberations, http://www.pittsburghlivecom/x/pittsburghtrib/news/cityregion/s_.559258.html

Quoted in Philadelphia Inquirer on Wednesday April 2 about jury deliberations. http://www.philly.com/philly/news/local/17215627.html

My research with Patrick Brandt involving predicting the 2006 Congressional elections was quoted extensively in an article U.S. News and World Report.

Wrote an op-ed for Newsday (New York) on the impact of timing of events for presidential elections. Published 1/4/04. This was reprinted in the Dodge City Daily Globe (Kansas) on 1/8/04 and in the Chattanooga Times Free Press (Tennessee) on 1/25/04.

Spoke to Pi Sigma Alpha meeting on the Presidential Primary Process, February 2004.

Delivered a speech to the League of Women Voters of Broome and Tioga Counties entitled "Redistricting after Census 2000: Playing Political Hardball," September 25, 2001

Appeared as an hour long guest on NPR's "Talk of the Nation" to discuss the decennial census. March 7, 2001.

Stone Sweet, Alec and Thomas L, Brunell. 2000, "The European Court, National Judges, and Legal Integration: A Researcher's Guide to the Data Set on Preliminary References in EC Law, 1958-98." Working paper, Robert Schuman Centre for Advanced Studies. European University Institute,

Brunell, Thomas L. and Amihai Glazer. 1999. "Evidence for the Irrationality of Governmental Policy." Working paper, Center for the Study of Democracy, U.C. Irvine.

Stone Sweet, Alec and Thomas L. Brunell, 1997. "The European Court and the National Courts: A Statistical Analysis of Preliminary References, 1961-95," Working paper 14/97, Jean Monnet Center, Harvard Law School.

Appeared on News Channel 34 (ABC) on 11/12/00 discussing the process by which we amend the constitution.

Appeared on Fox 40 on election night 11/7/00 as an analyst discussing the election, Appeared on WBNG TV (CBS) on 11/2/00 discussing voter fatigue.

Appeared on News Channel 34 (ABC) on 11/2/00 discussing the Electoral College,

Quoted in Press and Sun-Bulletin on 10/14/00 in an article about the 26th district Congressional election in New York,

Appeared on WBNG TV (CBS) with students in my class discussing the second Clinton/Lazio debate, 10/8/00.

Appeared on News Channel 34 (ABC) discussing Presidential debate, 10/4/00 Appeared on News Channel 34 (ABC) discussing Presidential debate, 10/3/00

Appeared on News Channel 34 (ABC) discussing the 2000 NY Senatorial primary, 9/12/00.

Appeared on WBNG TV (CBS) News discussing the 2000 presidential primaries, March 7, 2000.

Appeared on WBNG TV (CBS) News discussing Census 2000 and its likely impact on New York, January 20, 2000.

Appeared on WBNG TV (CBS) and News Channel 34 (FOX) talking about turnout in local elections. October 2, 1999.

Brunell, Thomas L. "Accurate Census Count Vital for New York," The Press & Sun—Bulletin. July 25, 1999. Page 6E.

Invited Talks

"Why We Need Fewer Competitive Elections in the U.S. House of Representatives." Department of Government, University of Texas, Austin, January 27, 2006. "Why Fewer Competitive Elections are Better in Single Member District Electoral Systems." May 27, 2005, Nuffield College, Oxford University.

"Parsing Sincere Versus Strategic Interest Group Behavior: Explaining Patterns of Hard Money Contributions to Candidates for the U.S. Congress." January 9, 2003, Dept. of Political Science UC Riverside.

"Party Polarization and Divided Government." American Politics Research Group, University of North Carolina, Chapel Hill. December 1, 2000.

"The Politics of Census Taking in the United States. Nuffield College, Oxford University, September 28, 1999.

"The Statistical Adjustment of the 2000 U.S. Census, The George Washington University, June, 1999.

Conference Activity

"Replacement Effects and the Slow Cycle of Ideological Polarization in the U.S. House." Presented at the Annual Meeting of the American

Political Science Association, Washington D.C., September 2010.

"Who Wants Electoral Competition and Who Wants to Win?" With Harold Clarke. Presented at the Annual Meeting of the Midwestern Political Science Association, Chicago, April, 2008.

"The Impact of Electoral Competitiveness on Voters's Attitudes Toward Government: Evidence from the U.S., Great Britain, and Canada," With Elizabeth Clausen. Presented at the Annual Meeting of the Western Political Science Association, Las Vegas, NV, March 2007,

"The Impact of Electoral Competitiveness on Voters's Attitudes Toward Government: Evidence from the U.S., Great Britain, and Canada." With Elizabeth Clausen Presented at the Annual Meeting of the Midwestern Political Science Association, Chicago IL, April 2007.

"Time to Deliberate: Factors Affecting the Length of Jury Deliberations" With Chetan Dave and Nicolas Morgan. Presented at the Annual Conference on Empirical Legal Studies, New York Law School, November 2007.

"Move to the Center or Mobilize the Base? Effects of Political Competition, Voter Turnout, and Partisan Loyalties on the Ideological Convergence of Vote-Maximizing Candidates in Two-Party Competition." With Bernard Grofman, Sam Merrill, and Jim Adams. Presented at the Annual Meeting of the American Political Science Association, Philadelphia, PA August 30 - September 3, 2006.

"Rethinking Redistricting: How Drawing Districts Packed with Partisans Improves Representation and Attitudes Towards Congress." Presented at the Annual Meeting of the American Political Science Association, Washington, DC, September 1-4, 2005.

"Evaluating the Political Effects of Partisan Gerrymandering." With Bernard Grofman. Presented at the Annual Meeting of the American Political Science Association, Washington, DC, September 1-4, 2005,

"The Impact of Primary Type on Competitiveness of U.S. Congressional Primary Elections." Presented at the Annual Meeting of the American Political Science Association, Chicago, IL, September 1-5, 2004.

"The Relationship Between Descriptive Representation of African Americans in Congress and Attitudes Toward Government." With Rachel Cremona and Chris Anderson, presented at The Annual Meeting of the Midwestern Political Science Association, Chicago, IL, April 14-17, 2004,

"Do National Tides Affect Governors?: Midterm Loss in Gubernatorial Elections ." With Robin Best, presented at The Annual Meeting of the Midwestern Political Science Association, Chicago, IL, April 14-17, 2004.

"The Relationship Between Parties and Interest Groups: Explaining Interest Group Donations," Presented at the Annual Meeting of the American Political Science Association, Boston, MA August 26-September 1, 2002,

"The Entrance of Women into the U.S. Congress: The Widow Effect." with Lisa Solowiej. Presented at the Annual Meeting of the Southern Political Science Association, Atlanta, GA November 7-10, 2001.

"Before Election Day: The Effect of Timing of Elections in U.S. Presidential and Congressional Elections." Presented at the Annual Meeting of the American Political Science Association, San Francisco, CA August 30-September 2, 2001.

"Ideological Swing Districts in the U.S. House of Representatives," with A.J. Quackenbush. Presented at the Annual Meeting of the American Political Science Association, San Francisco, CA August 30-September 2, 2001.

"The Effect of District Diversity on Party Loyalty Voting in the U.S. Congress," Presented at the Annual Meeting of the Western Political Science Association, Las Vegas, March 15-17, 2001.

"Explaining the Proportion of Split House-President Outcomes, 1900-1996," with Bernard Grofman and Samuel Merrill. Presented at the Annual Meeting of the Public Choice Society, San Antonio, Texas, March 9-11, 2001.

"Congress and the Courts: The Strange Case of the Census," Florida International University, Miami, Florida. April 7-9, 2000. Conference on Congress and the Courts.

"The Link Between Primary Type and Representation in the U.S. Senate." Presented at the 1999 Annual Meeting of the American Political Science Association, Atlanta GA.

"The Power of Ideologically Concentrated Electorates." Presented at the 1997 Annual Meeting of the American Political Science Association, Washington D.C, August 28-31.

"Rethinking the Link Between District Diversity and Electoral Competitiveness," Presented at the 1997 Annual Meeting of the American Political Science Association, Washington D.C. August 28-31.

"Comparing Electoral Competition, Responsiveness, and Change in the House and Senate: The Senate Really is Different." Presented at the 1997 Annual Meeting of the Southwestern Social Science Association, New Orleans, March 26-30.

"Explaining the Ideological Differences Between the Two U.S. Senators Elected from the Same State: An Institutional Effects Model," with Bernard Grofman, Presented at the 1997 Annual Meeting of the Public Choice Society, San Francisco, March 21-23.

"The Power of Concentrated Ideological Minorities," with Bernard Grofman and William

Koetzle. Presented at the 1997 Annual Meeting of the Public Choice Society, San Francisco, March 21-23.

"Why Do Voters Split Their Tickets? A Comparative Midpoints Approach," with Bernard Grofman, Michael McDonald, and William Koetzle. Presented at the 1997 Annual Meeting of the Public Choice Society, San Francisco, March 21-23.

"Explaining Divided Senate Delegations 1788-1994, A Realignment Approach." Presented at the 1996

Annual Meeting of the American Political Science Association, San Francisco, August 28 - September 1, 1996.

"Toward a Realignment-Based Theory of Divided Senate Delegations" presented at 1995 Western Political Science Association Meeting, San Francisco, March 1996, And at the 1996 Annual Meeting of the Public Choice Society, Houston, Texas, April 1996.

"Split-ticket Voting and Divided Government" with Bernard Grofman, Michael McDonald, and William Koetzle. Presented at the Conference on Strategy & Politics, Center for the Study of Collective Choice, University of Maryland, April 14, 1996,

"Comparing Midterm Elections in the U.S. House and Senate," with William Koetzle and Bernard Grofman. Presented at the 1996 Annual Meeting of the Public Choice Society, Houston, Texas, April, 1996.

"Explaining Seat Change in the United States Senate, 1922-1994," with William Koetzle, Presented at the 1995 Midwestern Political Science Association Annual Meeting in Chicago, Illinois, April 1995,

"Lip-Reading, Draft-Dodging, and Perot-noia: The 1992 Presidential Campaign in Editorial Cartoons," with William Koetzle, Presented at the 1994 Western Political Science Association Annual Meeting in Albuquerque, New Mexico, March 1994,

Teaching Experience

Introduction to U.S. and Texas Government

Political Parties and Interest Groups
American Political Institutions
Race and Redistricting
Congress
Campaigns and Elections
Statistics
Computer Based Research in Social Science
Graduate seminar in American Politics
Graduate seminar in Electoral Systems
Graduate seminar in American Political Institutions
Graduate seminar in Comparative Institutions
Graduate seminar in Election Law and Electoral Systems

Service & Professional Activities

2007-present Associate Program Head and Director of Graduate Studies, Political Science, UT Dallas.

2005-2007 Executive Committee, Political Science, UT Dallas,

2006 American Politics search committee, UT Dallas, 2003-2005 Faculty Senate, Northern Arizona University, 2000-2001 Faculty Senate, Binghamton University.

2000-2001 Graduate Committee, Department of Political Science, Binghamton University.

2000-2001 American Politics Search Committee, Binghamton University. 1999-2000 American Politics Search Committee, Binghamton University,

1999-2000 Graduate Committee, Department of Political Science, Binghamton University.

Reviewer, National Science Foundation, American Political Science Review, American Journal of

Political Science, Journal of Politics, Legislative Studies Quarterly, Journal of Theoretical Politics, American Politics Review, National Science Foundation, Public Choice, Political Research Quarterly, Electoral Studies, British Journal of Political Science, Journal of European Public Policy, European Journal of Political Research, and Party Politics.

Ph.D Students

finished

Paul Collins, faculty at University of North Texas

DeWayne Lucas, faculty at Hobart and William Smith Colleges

Marcus Allen, faculty at Wheaton College

Billy Monroe, faculty at Stephen F. Austin State College

Any Gould, faculty at Evergreen State College

Walt Borges, faculty at Grinneli College

Redistricting and Litigation Experience

Expert Witness, Pennsylvania Congressional, 2002, testified in state and federal court

Expert Witness, Texas Congressional, 2001, testified in state court

Expert Witness, Alabama Congressional, 2002, testified in federal court

Member of Litigation Team, Arizona State Legislative, 2003

Rebuttal Witness, Alaska State Legislative, 2002

Expert Witness (wrote a report but did not testify), Virginia State Legislative, 2001

References

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NORTH CAROLINA GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27603

Joint Statement by Senator Bob Rucho, Chair of the Senate Redistricting Committee, and Representative David Lewis, Chair of the House Redistricting Committee, released on June 17. 2011

The Chairs of the Joint House and Senate Redistricting Committee are committed to proposing fair and legal districts for all citizens of North Carolina, including our minority communities. Therefore, on June 23, 2011, the Joint House and Senate Redistricting Committee will hold a public hearing on Voting Rights Act districts and four other districts proposed by the Chairs for the 2011 State Senate and State House redistricting plans.

Locations for this public hearing include the North Carolina Museum of History in Wake County, Fayetteville Technical Community College, Guilford Technical Community College, UNC Charlotte, UNC Wilmington, East Carolina University, and Roanoke-Chowan Community College. The public hearing will run from 3:00 PM to 9:00 PM. Individuals interested in speaking should call the General Assembly or consult the General Assembly's web site for sign-up procedures.

We have decided to focus this public hearing on proposed legislative Voting Rights Act ("VRA") districts and four other proposed districts. We have chosen this option because of the importance of minority voting rights. Moreover, the decisions by the North Carolina Supreme Court in *Stephenson v. Bartlett*, 355 N.C. 354 (2002) ("*Stephenson I*"), and *Stephenson v. Bartlett*, 357 N.C. 301 (2003)

("*Stephenson II*"), require that VRA districts be created before other legislative districts.

The Chairs believe that there is a strong basis in the record to conclude that North Carolina remains obligated by federal and state law to create majority African American districts. Our conclusion is based upon the history surrounding the creation of VRA districts in the State of North Carolina, both as ordered by the federal courts and as adopted by the Legislature, from 1986 through the present. Our conclusion is also supported by evidence and testimony submitted to the Joint Redistricting Committee or received at public hearings.

In creating new majority African American districts, we are obligated to follow the decisions in *Stephenson I* and *II* as well as the decisions by the North Carolina Supreme Court and the United States Supreme Court in *Strickland v. Bartlett*, 361 N.C. 491 (2007), affirmed, *Bartlett v. Strickland*, 129 S.Ct. 1231 (2009). Under the *Strickland* decisions, districts created to comply with section 2 of the Voting Rights Act, must be created with a "Black Voting Age Population" ("BVAP"), as reported by the Census, at the level of at least 50% plus one.[1] Thus, in constructing VRA majority black districts, the Chairs recommend that, where possible, these districts be drawn at a level equal to at least 50% plus one "BVAP." To determine the percentage of "BVAP" in proposed districts, we have used a more specific census category listed in our reports as "Total Black Voting Age Population" ("TBVAP"). This category includes any person 18 years old or older, who self identifies as wholly or partially

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[1] The North Carolina Supreme Court described the required majority as *Citizen* Black Voting Age Population ("CBVAP"). The 2010 Census did not report on this category of information.

"any part black." It is our understanding that this Census category is preferred by the United States Department of Justice and the United States Supreme Court. See Georgia v. Ashcroft, 539 U.S. 461, 473 n. 1 (2003).

During our proceedings we have asked for advice on the number, shape, and locations of VRA districts that should be included in the Senate and House plans. During our public hearings, members of the public requested that current majority African American districts be retained, where possible, and that additional majority black districts be created, where possible.

Based upon this testimony, along with input we have received from at least one black incumbent House member, the Chairs recommend, where possible, that each plan include a sufficient number of majority African American districts to provide North Carolina's African American citizens with a substantially proportional and equal opportunity to elect their preferred candidates of choice.

Based upon the statewide TBVAP figures, proportionality for the African American citizens in North Carolina means the creation of 24 majority African American House districts and 10 majority African American Senate districts. Based upon census figures for both 2000 and 2010, the 2003 plans do not satisfy this standard. The 2003 Senate plan, used in elections from 2004 to 2010, contains zero districts in which African Americans constitute a TBVAP majority. The 2003 House plan, as amended for the 2010 General Election, contains nine districts in which African Americans constitute a TBVAP majority based upon 2000 census figures. The 2003 House plan, as amended for the 2010 General Election, contains ten

districts in which African Americans constitute a TBVAP majority based upon 2010 census figures.

The Chairs note that under the benchmark 2003 plans, only eighteen African American members are currently serving in the House and only seven African Americans are currently serving in the Senate. The Chairs also note that two incumbent African American senators were defeated in the 2010 General Election. Both of these former African American incumbents (Don Davis in District 5 and Tony Foriest in District 24) were defeated by white candidates in districts with a TBVAP population below 40%.

Unlike the 2003 benchmark plans, the Chairs' proposed 2011 plans will provide substantial proportionality for North Carolina's African American citizens. The 2011 House plan, recommended by Chairman Lewis, consists of 24 majority African American House districts and two additional districts in which the TBVAP percentage exceeds 43%. Moreover, the 2011 Senate plan proposed by Chairman Rucho consists of 9 majority African American Senate districts. Chairman Rucho has been unable to identify a reasonably compact majority African American population to create a tenth majority African American district.

Increasing the number of majority African American districts will ensure non-retrogressive legislative plans. Thus, adopting plans that increase the number of majority black districts will expedite the preclearance of each plan pursuant to Section 5 of the Voting Rights Act. See Federal Register Vol. 76, no. 27 at 7471: Report by the United States House of Representatives, Committee on the Judiciary, 109th Congress, 2d Session, Report 109-478 at 68 – 72 (2006); *Beer v. United States*, 425 U.S. 130 (1976).

Substantial proportionality also furthers the State's obligation to comply with Section 2 of the Voting Rights Act. See *Johnson v. DeGrandy*, 512 U.S. 997 (1994).

In creating proposed majority black districts, the Chairs have been guided by testimony and advice received from experts recommended by the Democratic legislative leadership. Based upon this information, the Chairs have rejected the possibility of any districts that would constitute the "cracking" or "packing" of any reasonably compact African American population, as those terms have been defined by the United States Supreme Court. See *Quitter v. Voinovich*, 507 U.S. 146, 153-154 (1993). Nor have the Chairs supported any district that would involve the "stacking" of a minority population. We understand the term "stacking" to mean the submergence of a less affluent, geographically compact, African American population capable of being a majority in a single member district, within a larger, more affluent majority white population.

We wish to point out several features of the proposed VRA districts upon which the Chairs invite public comment.

First, testimony during the public hearing in New Hanover County indicated that the minority community in that area of the State would support the creation of a new majority African American House district to replace the former House District 18. That district was constructed in the 2003 House plan with an. African American voting age population substantially below 50% plus one. In *Strickland v. Bartlett*, both the North Carolina Supreme Court and the Supreme Court of the United States ruled that African American districts needed by the State to

comply with Section 2 of the Voting Rights Act must be established with a BVAP of 50% plus one. In response to testimony during the New Hanover public hearing, the plan proposed by Chairman Lewis includes a revised black voting age majority version of District 18 that complies with the *Strickland* decisions.

The Chairs also wish to receive comments regarding the Senate and House districts to be adopted in Forsyth County. Districts in Forsyth County were found to be in violation of Section 2 of the Voting Rights Act in the decision of *Thornburg v. Gingles*, 478 U. S. 30 (1986). This decision has never been vacated or over-ruled and is still binding on the State. Moreover, the historical and legislative records indicate that all of the elements necessary to prove a Section 2 violation in Forsyth County still remain, except as described below.

In 2003, as reported by the 2000 Census, the State created three legislative districts in Forsyth that consisted of a TBVAP in excess of 40%: Senate District 32 – 41.42%; House District 71 – 51.57%; and House District 72 – 43.40%. Pursuant to the 2010 Census, these districts have the following percentage of TBVAP population: Senate District 32 – 42.52%.; House Distr t 71 – 51.09%; and House District 72 – 45.40% Unfortunately, also under the 2010 Census, all three districts are under-populated for compliance with the constitutional requirement of one person one vote. Because all three districts are under-populated, all three must be adjusted to add additional total population. See *Stephenson I* and *II*. Adding additional total population has the effect of decreasing the percentage of the African American voting age population in each district.

Because House Districts 71 and 72 are both significantly under-populated, Chairman Lewis believes that it is not possible to create two majority African American House districts in Forsyth. He is concerned that it may not be possible to create one reasonably compact majority black house district in Forsyth County and another district that would keep District 72 at a TBVAP level that reasonably approaches its benchmark level. Based upon the experience in Democratic primaries for Senate District 32, there is also concern that a plurality House district in the 40% range or under may not re-elect the current African American incumbent in House District 72. Therefore, at this time, Chairman Lewis has recommended that both House districts, which currently elect two black incumbents, be created at TBVAP levels above 43%. Thus, under the 2010 Census, proposed House District 71 has a TBVAP population of 47.31%. Proposed District 72 would be established with a TBVAP percentage of 43.33%.

Chairman Rucho believes that it is not possible to create a majority black Senate district in Forsyth. He therefore recommends that proposed Senate District 32 be created at a TBVAP percentage of 39.32%.[2] Chairman Rucho also recommends that the current white incumbent for the Forsyth Senate district not be included in the proposed Senate District 32. The white incumbent has defeated African American candidates in Democratic primaries in 2004 and 2010. The Senate

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[2] Proposed Senate District 32 also contains a Hispanic population of 12.21%, thus rendering this district as a "majority minority" district. While we have not performed a cohesion analysis involving African Americans and Hispanics, we have been advised by Congressman Watt that, in his opinion, urban African American and Hispanic voters who reside in his congressional district are cohesive.

Chair recommends this adjustment in the absence of a tenth reasonably compact majority African American senate population. If adopted by the General Assembly, proposed coalition District 32 will provide African American citizens with a more equal, and tenth opportunity, to elect a candidate of choice.

The Chairs also wish to note their attempts to consider political access and opportunities for the Native American population located in southeastern North Carolina. In recognition of those important interests, the House Chair recommends that House District 47 be retained as a majority Native American District.

In the 2003 Senate plan, Robeson County was combined with Hoke County to create a two county, single Senate district (Senate District 13). Chairman Rucho believes that it is not possible to create a majority Native American Senate district that complies with federal and state law. Because it is not possible to create a majority Native American Senate district, the *Stephenson I* and *II* county combination rules prevent the re-establishment of District 13 based upon a combination of Robeson and Hoke Counties. Under the 2010 Census, the combined population of Robeson and Hoke is slightly lower than the maximum negative population deviation range (minus 5%). Thus, unlike the 2003 Senate plan, Robeson County cannot be grouped with Hoke County. As a result, Robeson County has been combined with Columbus County to form a two county senate district. Under this configuration, proposed Senate District 13 will retain a significant and influential percentage of Native American citizens.

The Chairs have solicited redistricting input from North Carolina's Hispanic population. Based upon the

2010 Census, neither Chair was able to identify a reasonably compact Hispanic population that could form the basis for either a majority Hispanic House or Senate District. The Chairs would entertain any proposals for a majority Hispanic House or Senate district that complies with applicable federal and state law.

On March 24, 2011, we announced that the Chairs would recommend legislative redistricting plans that complied with the criteria established in Stephenson I and II and Bartlett v. Strickland. On that date, and on other occasions, including numerous public hearings, the Chairs have solicited members of the General Assembly and the public for any information, comments and advice related to redistricting. On March 24, 2011, every member of the General Assembly received notice of the resources available to them for the preparation of proposed districts and plans. The Chairs also have taken the unprecedented step of providing additional expert staff and technology assistance to the Legislative Black Caucus, requested by the Black Caucus in order to draw their own proposed districts and plans. As of today, we have not received any proposals for specific legislative districts or proposed state wide legislative plans from the Democratic leadership or the Legislative Black Caucus

Nevertheless, the Chairs remain interested and open to other proposed configurations for majority minority districts as well as non-VRA districts. The Chairs will also consider recommendations regarding legislative districts in Forsyth County and any proposed Senate plan that includes ten majority African American districts, provided any such

proposals are based upon ten reasonably compact majority African American populations.

As we stated on March 24, 2011, the Chairs continue to recommend that alternative proposals comply with the requirements of Stephenson I and II and Bartlett v. Strickland. We also recommend that any proposed state-wide plan contain a sufficient number of districts that will bring African American citizens as close as possible to substantial proportionality in the number of majority African American districts.

NORTH CAROLINA GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27603

Statement by Sen. Bob Rucho and Rep. David Lewis Regarding Proposed VRA Districts.

In anticipation of the public hearing scheduled for June 23, 2011, we want to correct several erroneous statements that have appeared in the news media regarding our proposed Voting Rights Act ("VRA") districts.

Claim 1: The proposed VRA districts plan includes an illegal "packing" strategy.

"I think they unnecessarily and probably illegally pack minority voters into districts," said Sen. Dan Blue, D-Wake. "I need to analyze them a little bit further, but my initial impression is they're engaged in packing in non-Section 5 Voting Rights Act districts." ("*Blue questions legality of draft redistricting maps*," SGR Today, 6/20/11)

"How. . . 'packing' may dilute minority voting strength is not difficult to conceptualize. A minority group, for example, might have sufficient numbers to constitute a majority in three districts. So

apportioned, the group inevitably will elect three candidates of its choice, assuming the group is sufficiently cohesive. But if the group is packed into two districts in which it constitutes a super-majority, it will be assured only two candidates." *Voinovich v. Quilter*, 507 U.S. 146, 153-154 (1993).

Senator Dan Blue, among others, has stated that our proposed majority black districts result in illegal "packing" of black voters. There is no factual or legal basis for this argument.

The U.S. Supreme Court has defined the term "packing" to mean the intentional creation of super majority black districts designed to prevent the creation of one or more other majority black districts. *See Voinovich v Quilter*, 507 U.S. 146 (2003). We have not engaged in this practice. Senator Blue is presumably aware of the Supreme Court's definition of packing. If there is another Supreme Court case that supports Senator Blue's definition we request that he provide it to us.

Claim 2: The proposed VRA districts plan includes too many majority-minority districts.

"The new maps include 24 majority-black districts in the N.C. House and 10 in the Senate, according to an attached memo." (*"North Carolina redistricting maps may hurt Republican allies William Brisson, Dewey Hill," Fayetteville Observer*, 6/20/11)

"Any legislative district designated as a Section 2 district under the current redistricting plans, and any future plans, must satisfy either the numerical majority requirement as defined herein, or be redrawn in compliance with the Whole County Provision of the Constitution of North -Carolina and with Stephenson

I requirements." *Strickland v. Bartlett*, 649 S.E.2d 364, 376 (N.C. 2007).

Our proposed Senate plan includes only nine majority black Senate districts. We were unable to identify a tenth reasonably compact majority black population which could be used to create a tenth majority black Senate district. Senate District 32 is not a majority black district because of the absence of sufficient black population in Forsyth County. In proposed Senate District 32, blacks comprise 39.48% of the voting age population. Voting age Hispanics constitute 12.21%.

Congressman Watt has advised us that urban Hispanic populations in his Congressional district tend to vote for the same candidates favored by urban African Americans voters. Thus, our proposed version of Senate District 32 provides the black community with a tenth opportunity to elect a candidate of their choice, provided African American voters in Forsyth County can build a coalition with urban Hispanic voters.

Our proposed Senate District 13 was constructed, as was the predecessor District 13, to have a plurality Native American population (26.49%). The Native American population combines with the black population (25.92%) to establish a majority minority district. However, this district is neither majority Native American nor majority black.

Congressman Watt has advised us that black voters and Native American voters do not tend to vote for the same candidate and are not politically cohesive. The predecessor district to our proposed Senate District 13 has always elected a white candidate. Current Senate District 13 never elected a black or a Native American

candidate. The failure of an African American or Native American to be elected from current Senate District 13 seems to support Congressman Watt's opinion,

There are only twenty four proposed majority black House districts in our proposed plan. Some media outlets have reported that there are twenty seven majority black House districts.

The alleged twenty-fifth district, House District 47, is a majority Native American district and replicates a similar district in the 2003 house plan. It does not count towards giving the black community a proportional and equal opportunity to elect candidates of their choice.

Two other alleged majority black districts, House Districts 71 and 72 in Forsyth County cannot both be drawn with a black voting age population of over 50%. Neither district is therefore a majority black district.

Claim 3: The proposed VRA districts plan is solely an attempt to maintain Republicans' political power.

"Democrats charged that Republicans are trying to pack black Democrats into districts so as to make it easier for the GOP to win the remaining ones. . . 'They want to make sure they maintain their power,' said Fleming El-Amin, a local activist who sits on the Democratic committee that will review the redistricting recommendations." ("*GOP well within rights on redistricting, but Garrou would be heavy loss*," *Winston-Salem Journal*, 6/22/11)

The State has an obligation to comply with the Voting Rights Act. In the 2003 plans, rather than comply with the VRA, the previous Legislative

leadership engaged in a redistricting technique called "cracking."

Under Supreme Court precedent, one example of "cracking" or "fragmenting" occurs when Legislative leaders remove black population from a majority black district and spread these voters into other adjoining districts that will elect a white candidate but not a black candidate. See *Voinovich v Quilter* 507 US 146, 153 (2003); *Thornburg v Gingles*, 478 U.S. 30, 46 n. 1 1 (1986). Based upon these Supreme Court definitions, in creating the 2003 plans, the former Legislative leaders "cracked" majority black districts in two different ways.

First, in the 2003 plans, populations in several formerly majority black districts were reduced to populations levels of 39% to 49% black. This practice was rejected by the North Carolina and United States Supreme Courts in *Strickland v Bartlett*, 129 S.Ct. 1231 (2009). Where possible, majority black districts drawn to comply with the VRA must be based upon an actual majority of black voters.

Second, the Legislative leaders rejected-several majority black districts in locations at which the black community had a right, under the VRA, to a majority black district.

While districts that adjoin majority black districts may become more competitive for Republican candidates because of compliance with the VRA, such competitiveness results from compliance with the VRA, This is the opposite of the prior Legislative leadership intentionally cracking majority black districts required by the VRA to ensure the re-election of white incumbents.

Claim 4: The proposed VRA districts plan dilutes the influence of minority voters.

"It is illegal to arbitrarily pack minorities into the same districts just for the sake of doing it because you dilute the minorities' voting strength in other districts." Senator Dan Blue, D-Wake ("*Blue questions legality of draft redistricting maps*," SGR Today, 6/20/11)

"[A] minority group must constitute a numerical majority of the voting population in the area under consideration before Section 2 of the VRA requires the creation of a legislative district to prevent the dilution of the votes of that minority group." *Strickland v. Bartlett*, 649 S.E.2d 364, 371 (N.C. 2007).

In 2003, the Legislative leadership pursued a strategy which reduced the number of majority black districts and replaced them with two types of districts.

Districts that were between 40 and 50% black were called "effective" majority districts. The Legislative leaders argued that it was not necessary to create majority black districts under the VRA because black populations over 40% were "good enough" to elect a black candidate.

In 2003, Legislative leaders also supported "influence districts." These were districts with black populations between 30% and 40%. These districts have very rarely elected black candidates, but the Legislative leaders argued that black voters would be able to "influence" the election of candidates who were "sympathetic" to their point of view.

A Supreme Court case called *Georgia v Ashcroft*, 539 U.S. 461 (2000), provided some legal support for this proposition. However, in a case called *LULAC v Perry*,

548 U.S 399 (2006), the US Supreme Court clarified that "influence" districts were not required by the VRA.

Moreover, *Georgia v Ashcroft* was legislatively overruled in 2006 when the Congress re-enacted Section 5 of the VRA. See Federal Register Vol. 76, no. 27 at 7471: Report by the United States House of Representatives, Committee on the Judiciary, Report 109-478 at 68-72.

Finally, in *Strickland v Bartlett*, 361 N.C. 491 (2007), *affirmed by Bartlett v Strickland*, 129 S.Ct. 123 (2009), the North Carolina and U.S. Supreme Courts announced that majority black districts must be drawn with an actual majority black voting age population.

Thus, the current 2003 plans violate the voting rights of black citizens in two ways. Alleged majority black districts were not drawn with a true majority of black voters. And "influence districts" were incorrectly substituted for true majority black districts. Our proposed VRA districts do not repeat the violations.

Claim 5: These districts are a done deal and will be enacted with no input from voters.

We have had an unprecedented number of public hearings. For example, in 2001 Legislative leaders held 26 public hearings including hearings in 13 counties covered by section 5 of the Voting Rights Act. In 2001, Legislative leadership did not produce proposed legislative or congressional plans until the end of the public hearing process. In 2003, we are aware of no public hearings held on proposed plans.

By way of contrast, in 2011, we have already held 36 public hearings including 24 in counties that are

covered by section 5 of the Voting Rights Act. Under our current schedule we intend to hold three public hearings. The first will be on June 23 and will focus on proposed VRA districts and four other districts. On July 7, 2011, we intend to hold an additional public hearing.

We have also provided an unprecedented level of redistricting support to the Black Caucus. This included the hiring of additional staff with special redistricting expertise and technology assistance not provided to other members of the General Assembly.

Starting on March 24, 2011, we have repeatedly asked for input from the Democratic leadership and the Black Caucus on the issue of majority black districts. We understand that the Black Caucus has produced alternative maps, however, they have not been provided to us. Further, while we have received some input from individual members regarding specific districts, to date we have received no suggestions for proposed plans from the Democratic leadership or any of several interest groups to whom we have made requests for recommendations and input.

We are more than willing to entertain specific suggestions related to our proposed plans and specific districts.

Claim 6: The proposed VRA districts plan violates principles of compactness.

"State Sen. Eric Mansfield, a Democrat, said he's disappointed by the shape of his new district. The old district is a compact, somewhat rectangular shape covering the northwest corner of Cumberland County. Mansfield said the new shape resembles a crab." ("*North Carolina redistricting maps may hurt*

Republican allies William Brisson, Dewey Hill," *Fayetteville Observer*, 6/20/11)

This argument misstates the law. Majority black districts must be based upon reasonably compact black populations, not districts.

Congressman Butterfield's First Congressional district has been found by a federal court to be based upon a reasonably compact black population. Using Congressman Butterfield's district as an example, we believe that all of our proposed legislative districts are, based upon reasonably compact black populations.

However, we would entertain any specific suggestions from the Black Caucus or others identifying more compact majority black populations to form the core of alternative majority black districts, provided the total districts proposed provide black voters with a substantially proportional state-wide opportunity to elect candidates of their choice. Moreover, any such districts must comply with *Strickland v Bartlett*, and be drawn at a level that constitutes a true majority of black voting age population.

NORTH CAROLINA GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27603

Statement by Senator Bob Rucho and Representative David Lewis Regarding the Proposed 2011 Congressional Plan

July 1, 2011

From the beginning, our goal has remained the same: the development of fair and legal congressional and legislative districts. Our process has included an unprecedented number of public hearings (36)

scheduled before the release of any maps. These included an unprecedented number of hearings in (24) counties covered by Section 5 of the Voting Rights Act. In another unprecedented act, we provided the Legislative Black Caucus with staff support and computer technology resulting in costs to the General Assembly in excess of $60,000. We also decided to schedule twenty-five public hearings to give the public an opportunity to comment on legislative and Congressional maps. Consistent with the guidance provided by the North Carolina Supreme Court in *Stephenson v Bartlett* 355 N.C. 354 (2002), our first public hearing was focused on our proposed VRA legislative districts. Our second public hearing, scheduled for July 7, 2011, will give the public an opportunity to comment on our proposed Congressional plan. Finally, our third public hearing, scheduled for July 18, 2011 will solicit feedback on our proposed legislative plans.

Today we are pleased to release our proposed 2011 congressional-Plan. We believe that our proposed Congressional plan fully complies with applicable federal and state law. We also believe that a majority of North Carolinians will agree that our proposed plan will establish Congressional districts that are fair to North Carolina voters.

Unlike state legislative districts, there are very few constitutional criteria that apply to legislative districts. Some of the factors we considered include the following:

1. Use of current Congressional plan as a frame of reference.

The current Congressional plan could not be retained for several reasons. However, we used the

current plan as a frame of reference for re-drawing new congressional districts. Thus, our proposed plan and the current Congressional plan (2001: Congress Zero Deviation) are similar in some respects.

2. Compliance with "one person one vote."

Based upon several decisions by the United States Supreme Court, Congressional districts must be drawn at equal population. *See Westberry v Sanders*, 376 U.S. 1 (1964); *Karcher v Daggett*, 466 U.S. 910 (1984). The ideal population for a North Carolina Congressional district under the 2010 census is 733,499. Our proposed districts meet this constitutional requirement.

Re-drawing districts with equal population necessitated significant changes in the boundary lines of the current districts. Revisions were required because six of the current Congressional districts are significantly under-populated below the ideal number. (Districts 1, 5, 6, 8, 10, and 11). In contrast, seven districts are over-populated above the ideal number (2, 3, 4, 7, 9, 12, and 13). The population shift between our thirteen districts is largely the result of more rapid growth in the Mecklenburg/Piedmont and Research Triangle areas of the state as compared to more rural areas located in eastern and western North Carolina.

3. Compliance with the Voting Rights Act.

Our proposed plan, if adopted by the General Assembly, will need to be "precleared" under Section 5 of the Voting Rights Act. States have the option of seeking administrative preclearance by the United States Department of Justice or by filing a lawsuit seeking preclearance by the United States District Court of the District of Columbia. To obtain preclearance, we are obligated to show that the plan is

not retrogressive or purposefully discriminatory. We believe that our plan accomplishes this goal.

(a) Districts Represented by Black Incumbents

Voters in the First and Twelfth Congressional Districts are represented by two African American members of Congress, Congressman G.K. Butterfield and Congressman Mel Watt. As part of our investigation into fair and legal congressional districts, we sought advice from Congressman Butterfield and Congressman Watt. We believed that we could benefit from hearing their views on how their districts should be re-drawn in light of population movement.

The State's First Congressional District was originally drawn in 1992 as a majority black district. It was established by the State to comply with Section 2 of the Voting Rights Act. Under the decision by the United States. Supreme Court in *Strickland v. Bartlett*, 129 U.S. 1231 (2009)., the State is now obligated to draw majority black districts with true majority black voting age population. Under the 2010 Census, the current version of the First District does not contain a majority black voting age population.

In addition, the current First District is substantially under-populated by over 97,500 people. Thus, in order to comply with "one person one vote," over 97,500 people must be added to create a new First District.

We met with Congressman Butterfield to discuss these issues. Congressman Butterfield acknowledged that the legal deficiencies of the existing First District could be addressed through the addition of either the minority community located in Wake County or the minority community residing in Durham County.

Congressman Butterfield believed that including Wake County in his district would give him the opportunity to represent the communities reflected by Shaw University and St. Augustine College. Between these two options, Congressman Butterfield advised us that he preferred the addition to his district of the minority population in Wake County, as opposed to the minority population in Durham County.

We elected to accommodate Congressman Butterfield's preference. By adding population from Wake County, we have brought the First District into compliance with "one person, one vote." Because African Americans represent a high percentage of the population added to the First District from Wake County, we have also been able to re-establish Congressman Butterfield's district as a true majority black district under the *Strickland* case.

In light of the population growth experienced by urban counties and the slower growth experienced by rural population, drawing Congressman Butterfield's district into Wake County accomplished another important goal. It is less likely that the First District will become substantially under-populated during this decade and it is more likely that the First District can be retained in our proposed configuration at the time of the 2020 Census. This will provide stability for the minority community that has not been achieved by prior versions of this district.

Finally, we note that the United States Supreme Court has previously found Section 2 liability in Wake County in a case involving legislative districts. *See Thornburg v Gingles*, 478 U. S. 30 (1986). Thus, with this adjustment to the First District, for the first time in history the black community in Wake County will

have the opportunity to be part of a majority black Congressional district.

After we had adopted Congressman Butterfield's preference, and showed a map of our proposal to him, he expressed concern about the withdrawal of his district from Craven and Wayne Counties. Given our decision to add the minority community in Wake County to our proposed First District, the retention of populations in Wayne and Craven would result in the over-population of the First District. We believe that the benefits of adding the black community in Wake County outweighs any negative impacts. Moreover, by replacing these counties with the community in Wake County, we were also able to create a district that was based upon a more compact minority population.

Current District 12, represented by Congressman Watt, is not a Section 2 majority black district. Instead, it was created with the intention of making it a very strong Democratic District. *See Easley v Cromartie* 121 S.Ct. 1452 (2000). However, there is one county in the Twelfth District that is covered by Section 5 of the Voting Rights Act (Guilford).

As with Congressman Butterfield, we sought input from Congressman Watt regarding potential options for revising the Twelfth Congressional district, We have accommodated Congressman Watt's preference by agreeing to model the new Twelfth District after the current Twelfth District.

Following the framework of the district created by the 2001 General Assembly, to the extent practicable and possible, we have again based the Twelfth Congressional District on whole precincts.

Because of the presence of Guilford County in the Twelfth District, we have drawn our proposed Twelfth

District at a black voting age level that is above the percentage of black voting age population found in the current Twelfth District. We believe that this measure will ensure preclearance of the plan.

Finally, we have re-drawn the Twelfth District to reduce some population because 2010 census figures show that it is currently over-populated.

(b) Minority populations in other districts

No district in the 2001 Congressional plan contains a black voting age population in excess of 28.75% except for the First and Twelfth Districts. Our proposed Fourth Congressional District establishes one district with a black voting age population of 29.12%. Our proposed Third Congressional District contains a black voting age population of 23.50%. Our proposed District 8 has a black voting age population of 19.88% and a Native American voting age population of 7.12%. All other proposed districts have been created with a black voting age population of under 18%.

We believe that our proposed plan fully complies with both Section 5 and Section 2 of the Voting Rights Act.

4. Point Contiguity.

In past Congressional plans, prior legislative leadership elected to make a few congressional districts contiguous by a mathematical point. We believe that this past practice is arbitrary and irrational. It is also inconsistent with the standards for contiguity established by the North Carolina Supreme Court for legislative districts. *Stephenson v Bartlett*, 357 N.C. 301 (2003). We have elected to reject this criterion for congressional districts. All of our

congressional districts are contiguous in a real and meaningful manner.

5. Incumbents.

We decided to avoid placing incumbents in the same district. All incumbents in our proposed plan are located in a district in which they face no opposition from another sitting member of Congress.

6. Communities of Interest.

Communities of interest are political considerations which will always create some interests that will be recognized and others that will not. The, elected representatives are best equipped to determine this balance.

Because all of our districts are largely based in the same areas of the state in which they are located under the 2001 congressional plan, our districts reflect the same communities of regional interests recognized by the 2001 plan.

New District 4 is substantially based upon the current version of District 4. We decided to expand the district from Chatham County through Lee and Harnett County and into Cumberland County. Lee and Harnett Counties share with Chatham County many of the same rural and other communities of interest. Moreover, the interests of those residing within the urban areas of Cumberland County are similar to those who live in the urban areas of Orange and Durham Counties. Finally, all of the counties in our proposed District 4 are in the same media market which should help reduce the costs of campaigns in this district.

7. Whole counties and whole precincts.

Counties and precincts are two specific examples of communities of interest. Like other interests, they must be balanced. We have attempted to respect county lines and whole precincts when it was logical to do so and consistent with other relevant factors. Our plan includes 65 whole counties. Most of our precinct divisions were prompted by the creation of Congressman Butterfield's majority black First Congressional District or when precincts needed to be divided for compliance with the one person one vote requirement.

8. Urban Counties.

We decided to continue the tradition, as reflected in the 2001 plan that results in the division of urban counties into more than one Congressional district. We agree with the decision of prior legislative leadership that urban counties are best represented by multiple members of Congress. Moreover, creating multiple districts within an urban county makes it less likely that congressional districts in 2020 will experience the significant population shifts that make the 2001 plan unbalanced. We extended this policy to Buncombe County but elected not to divide New Hanover County. We concluded that the population in New Hanover is more isolated in the southeastern corner of North Carolina and was needed to anchor our new proposed Seventh Congressional District.

9. Creating More Competitive Districts.

The federal and state constitutions allow legislatures to consider partisan impacts in making Congressional redistricting decisions. While we have not been ignorant of the partisan impacts of the districts we have created, we have focused on ensuring

that the districts will be more competitive than the districts created by the 2001 legislature. Along these lines we wish to highlight several important facts. First, in twelve of our proposed thirteen districts, in the 2008 General Election, more voters voted for Democratic candidate for Attorney General, Roy Cooper than those who voted for the Republican candidate. Second, registered Democrats outnumber registered Republicans in ten of our proposed thirteen districts. Finally, the combination of registered Democrats plus unaffiliated voters constitute very significant majorities in all thirteen districts.

NORTH CAROLINA GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27603

Statement by Senator Bob Rucho and Representative David Lewis Regarding Proposed State Legislative Redistricting Plans

July 12, 2011

Today we are pleased to release our initial proposals for 2011 state legislative redistricting maps.

These maps are available on the General Assembly's website.

We will hold public hearings on these proposed plans on July 18, 2011, from 3:00 P.M. until 9:00 P.M. Locations for these hearings will include: the North Carolina Museum of History in Wake County, Fayetteville Technical Community College, Nash Community College, Roanoke-Chowan Community College, UNC Wilmington, Guilford Technical Community College, Central Piedmont Community College, Western Carolina University, Appalachian

State University, and Asheville-Buncombe Technical Community College.

Individuals interested in providing comments should call the General Assembly or consult the General Assembly's web site for sign-up procedures.

North Carolina has been the subject of numerous legal challenges to redistricting plans. Given this history, our primary goal is to propose maps that will survive any possible legal challenge. The first legal requirement is that legislative districts comply with the "one person one vote" standard affirmed in *Stephenson v Bartlett*, 355 N.C. 354 (2002) ("*Stephenson I*") and *Stephenson v Bartlett*, 357 N. C. 301 (2003) ("*Stephenson II*"). The second requirement is the creation of plans that will obtain preclearance under Section 5 of the Voting Rights Act ("VRA"), and foreclose the possibility of a successful challenge under Section 2 of the Voting Rights Act, Finally, plans must comply with State constitutional requirements as explained in the *Stephenson* decisions, and the decisions by the North Carolina Supreme Court and the United States Supreme Court in *Strickland v Bartlett*, 361 N.C. 491 (2007), a*ffirmed, Bartlett v. Strickland*, 129 S.Ct. 1231 (2009).

1. One person, one vote

All of our districts have been constructed with sufficient population so that they are within plus or minus 5% of the ideal population for state senate districts (190,710) and state house districts (79,462).

2. Voting Rights Act districts ("VRA districts")

We have explained our understanding of the Voting Rights Act in our statement issued on June 17, 2011. In our original plans, we proposed nine majority black

Senate districts and twenty four majority black House districts. "Majority" means in excess of 50% as required by the *Strickland* decision and affirmed by the US Supreme Court.

Based upon comments we received during the public hearing process, we have made several changes in our proposed VRA districts. For example, in the House plan, we elected to delete a majority black district we had proposed for southeastern North Carolina based upon the strong statements opposing such a district, including from the Southern Coalition for Social Justice ("SCSJ") as part of the broader Alliance for Fair Redistricting and Minority Voting Rights. The remaining 23 districts with a majority of black voting age population ("BVAP") combined with two over 40% BVAP districts, continue to provide black voters with a substantially proportional and equal opportunity to elect candidates of their choice. *See Johnson v DeGrandy*, 512 U.S. 997 (1994). Creating these districts also provides the State with a strong argument for preclearance of the plans under Section 5 of the Voting Rights Act. Federal Register Vol. 76, no. 27 at 7471; Report by the United States House of Representatives, Committee on the Judiciary, 109th Congress, 2d Session, Report 109-478 at 68-72 (2006); Beer v. United States, 425 U.S. 130 (1976).

Consistent with feedback provided at the public hearings or in person and as permitted by law, we have also made other changes in our proposed House VRA districts affecting Rep. Mobley, Rep. Gill, Rep. Earle, and the elimination of the southeastern district described above.

In the Senate, we have made two significant changes. Hoke and Cumberland Counties have been combined to form a majority black district (District

21). In the 2003 Senate plan, minorities in Hoke County were included in District 13 which was a mixed minority district which has elected a white Senator. Under our revised proposal, the black community in Hoke will now be part of a cohesive majority black district which should be able to elect a candidate of the minority community's choice. Both Cumberland and Hake are covered by Section 5 of the Voting Rights Act.

We have also elected to change our proposed Senate District 32 in Forsyth County to create a district with a percentage of BVAP (42.53%) which exceeds the percentage suggested for that district by the SCSJ.

Several of our critics have incorrectly argued that our plans "pack" African American voters. We have repeatedly asked Democratic leaders and others to provide a legal case which defines "packing" as either a majority black district or creating enough districts to give black voters a substantially equal and proportional opportunity to elect candidates of their choice. To date, we have not received any case citations to this effect from any of our critics. Regardless, in 1982, these same arguments were considered and rejected by Congress when it amended Section 2 of the Voting Rights Act. See *Gingles v Edmisten*, 590 F. Supp. 345, 356-357 (E.D. N.C. 1984) (Phillips, J.), *affirmed, Thornburg v Gingles*, 478 U.S. 30 (1986).

Since March 17, 2011, we have repeatedly requested Democratic leaders and members of the minority community to provide us with proposed redistricting plans. To date, only the SCSJ has submitted alternative plans. In prior testimony, Anita Earls, Executive Director of the SCSJ, advised us that majority black districts are still needed in the State of North Carolina. Consistent with that testimony, the

SCSJ has proposed nine senate districts with a BVAP from 40% to over 50%, twenty house districts with a BVAP from 40% to over 50%, and one house district with a BVAP of 37.06%. Even though all of the SCSJ districts have been drawn to achieve a specific level of black population, no one has accused the SCSI of packing black voters.

There are two major differences between the SCSJ minority districts and our proposed VRA districts.

First, we have complied, as we must, with the holding by the United States Supreme Court and the North Carolina Supreme Court in *Strickland v Bartlett*, 361 N.C. 491 (2007), *affirmed, Bartlett v Strickland*, 129 U.S. 1231 (2009). These decisions require that districts drawn to insulate the State from liability under the Voting Rights Act must be drawn with a black voting age population in excess of 50% plus one.

Five of the nine districts SCSJ contends are "VRA" senate districts are drawn at majority black levels while four are drawn at levels above 40% BVAP. We have proposed ten senate districts with nine of those districts drawn at majority levels. We agree with the SCSJ that our tenth senate district, District 32, cannot be drawn within Forsyth County in excess of 50% plus one.

The SCSI has also proposed eleven majority black house districts, nine house districts with black populations in excess of 40%, and one house district with black population at 37.5%. We have drawn all of our house districts at levels above 50% except for two districts in Forsyth County. We again agree with the position of the SCSJ that two majority BVAP districts cannot be drawn in Forsyth County.

Aside from the lack of black population in Forsyth County, which prevents a majority black senate district and two majority black house districts, in light of *Bartlett*, we see no principled legal reason not to draw all VRA districts at the 50% or above level when it is possible to do so. Now that it is apparent that these majority black districts can be drawn, any decision to draw a few selected districts at less than a majority level could be used as evidence of purposeful discrimination or in support of claims against the State filed under Section 2. Thus, in order to best protect the State from costly and unnecessary litigation, we have a legal obligation to draw these districts at true majority levels.

Second, we have a disagreement with the SCSJ regarding the number of majority black districts that should be drawn in each map. SCSJ has proposed nine districts it contends are "VRA" senate districts as compared to the ten districts in our proposed senate plan. In the House, the SCSJ has recommended 21 districts it contends are "VRA" districts as compared to the 25 districts we have suggested. Our proposed plan provides black voters in North Carolina with substantial or rough proportionality in the number of VRA districts in which they have an equal opportunity to elect their preferred candidates of choice. Our plans, therefore, give the State an important defense to any lawsuit that might be filed challenging the plans under Section 2 of the Voting Rights Act. *See Johnson v DeGrandy*, 512 U.S. 997 (1994). The plans proposed by the SCSJ fail to give black voters a proportional and equal opportunity and therefore would not provide the State with this defense.

3. State Constitutional requirements

Our senate and house plans have been drawn in compliance with the State constitutional requirements stated in Stephenson I and II, along with the decision of the North Carolina Supreme Court in *Strickland v Bartlett*, 361 N.C. 491 (2007), *affirmed, Bartlett v Strickland*, 109 S.Ct. 1231 (2009). These decisions establish a hierarchy of constitutional rules for drawing districts within a whole county or combinations of counties.. We encourage interested members of the public to consult these decisions as well as the *Legislator's Guide to North Carolina Legislative and Congressional Redistricting* published on the General Assembly's website.

We look forward to hearing comments and suggestions related to these proposed legislative maps during the public hearing scheduled for July 18; 2011.

NORTH CAROLINA GENERAL ASSEMBLY
STATE BUILDING
RALEIGH, NORTH CAROLINA 27603

Joint Statement of Senator Bob Rucho and Representative David Lewis regarding the release of Rucho-Lewis Congress 2

On July 1, 2011, we released for public comment our first proposed Congressional Redistricting plan called "Rucho-Lewis Congress 1" ("Rucho-Lewis 1"). We believe that Rucho-Lewis 1 fully complies with all applicable federal and state legal requirements.

On July 7, 2011, we held public hearings on Rucho-Lewis l and received many comments and suggestions regarding our initial proposed plan.

Today, we are pleased to release "Rucho-Lewis Congress 2" ("Rucho-Lewis 2"), which constitutes a revision of our original plan. We have made several

changes in this second proposed Congressional plan based upon comments received during the public hearings, comments on the General Assembly's website and feedback from members of Congress.

One of our goals is to create more competitive Congressional districts. In fact, John Dinan, Professor of Political Science from Wake Forest University, prepared an unsolicited report explaining how our initial proposed plan creates more competitive districts than the existing 2001 Congressional plan. Dr. Dinan's report is available for review on the General Assembly's web page and its redistricting link.

As explained by Professor Dinan, claims that we have engaged in extreme political gerrymandering, similar to what exists in the current versions of the Thirteenth, Second and Eighth Congressional Districts, are overblown and inconsistent with the facts. For example, based upon the results of the 2008 General Election, Democratic Attorney General Candidate Roy Cooper would have carried twelve of thirteen districts in Rucho-Lewis 1 and all thirteen districts in Rucho-Lewis 2. In both of our proposals, registered Democrats are a majority in three congressional districts. There are no districts in which registered Republicans are a majority. In both proposals, registered Democrats outnumber registered Republicans in ten districts. Finally, in both proposals, the combination of registered Democrats and unaffiliated voters constitute a majority in all thirteen districts. Thus, in both of our proposals, there are three strong Democratic districts. There are also ten districts in which Democratic candidates have the potential to win, without a single Republican vote,

provided they convey a message that appeals to their own registered Democrats and unaffiliated voters.

The changes found in Rucho-Lewis 2 stem in part from -comments we received regarding our initial proposal for Congressman Butterfield's First District. Changes we have made to the First District have had a rippling impact on most of the remaining districts.

Some of our critics have suggested that the First District be eliminated from any new redistricting plan because of it shape. Those who have made this argument fail to understand that the 2011 General Assembly inherited the First District from prior General Assemblies and that prior General Assemblies enacted the First District in order to comply with Section 2 of the Voting Rights Act. For example, some of these same critics are apparently unaware that the shape of the First District has been approved by a federal district court as compliant with the minority population "compactness" requirement for districts drawn to avoid liability under Section 2 of the Voting Rights Act. *Cromartie v Hunt*, 133 F.Supp.2d 407,423 (E.D.N.C. 2000). It would be legally imprudent to dissolve this district.

However, we cannot keep the 2001 version of the First District because of two flaws. First, the current First District is under-populated by over 97,000 people. Second, it does not include a majority black voting age population ("BVAP"), as required by Section 2 of the Voting Rights Act. *See Strickland v. Bartlett*, 129 U.S. 1231 (2009). Thus, any revision of the First District requires the addition of over 97,000 people. In addition, added population must include a sufficient number of African Americans so that the First District can re-establish as a majority black district.

Prior to our release of Rucho-Lewis 1, we discussed both of these problems with Congressman Butterfield. We believe that he understood and agreed that his district would be drawn into either Wake or Durham Counties to cure the district's equal population and voting rights deficiencies. We understood that Congressman Butterfield preferred that his district be drawn into Wake County instead of Durham. We also discussed with Congressman Butterfield that drawing his district into Wake County may result in the withdrawal from his district of one or more counties covered by Section 5 of the Voting Rights Act. Our understanding of Congressman Butterfield's preferences was reflected in our initial version of the First District found in Rucho-Lewis 1.

During our public hearings, several speakers expressed concerns about our decision to withdraw the First District from several counties covered by Section 5 of the Voting Rights Act. Despite these complaints, we have received only one other proposal that would bring the First District back to a majority black level. This sole proposed alternative drew the First District into Durham County instead of Wake. This proposal also included all of the Section 5 counties currently found in the 2001 version of the First District.

Following the public hearing, Congressman Butterfield issued a statement disputing our understanding of our prior discussions with him. Thus, as we now understand Congressman Butterfield's position regarding revisions to the First District, it appears that he may have no preference between drawing his district into either Wake or Durham Counties. We also assume that Congressman Butterfield would support keeping the black population in Section 5 counties at similar or higher

levels as compared to the amount of black population in Section 5 counties under the 2001 version of the First District.

Based upon this feedback, in Rucho-Lewis 2, we have drawn the First District into Durham County instead of Wake. There is historical precedent for a district that combines Durham with counties located in eastern North Carolina. Moreover, our revised version of the First District brings it up to ideal population with other districts and re-establishes it as a majority black district.

While our initial version of the First District was fully compliant with Section 2 and Section 5 of the Voting Rights Act, our second version includes population from all of the Section 5 counties found in the 2001 version of the First District. Moreover, the total BVAP located in Section 5 counties in Rucho-Lewis 2 exceeds the total BVAP currently found in the. 2001 version.

Some of our critics have complained about the appearance of our proposed Twelfth District. Again, these critics fail to understand that we inherited District 12 from prior General Assemblies. Further, this district has been approved by the United States Supreme Court as a district lawfully drawn to elect a Democrat. *Easley v Cromartie*, 121 S.Ct. 1452 (2000). The District has also been precleared under Section 5 of the Voting Rights Act on at least two prior occasions.

In adopting the Twelfth District, we intended to accommodate the wishes expressed to us by Congressman Watt, as we understood them, to continue to include populations located in Mecklenburg, Guilford, and Forsyth Counties. Our revised version of this district makes it more compact

and continues the district as a very strong Democratic district. Our revision of the Twelfth District is based upon whole precincts that voted heavily for President Obama in the 2008 General Election. We have been accused of illegally "packing" black voters into the Twelfth District and illegally "diluting" the "influence" of black voters. We have repeatedly asked our critics for any case law that supports these arguments and none has been provided. By continuing to maintain this district as a very strong Democratic district, we understand that districts adjoining the Twelfth District will be more competitive for Republican candidates.

EXHIBIT I

Laura Leslie, Butterfield disputes chairs' statement, WRAL.com (July 5, 2011), http://wral.com/news/state/nccapital/blogspot/9819836/?d_comment_order=forward

Butterfield disputes chairs' statement

Posted July 5, 2011



By Laura Leslie

First district Democratic Congressman G.K. Butterfield is taking issue with statements by redistricting leaders Sen. Rucho and Rep. Lewis about his Input in the new congressional map.

Butterfield's district has fallen below apportionment guidelines in the past 10 years and needs additional voters added to it.

In a Joint statement issued Friday, Lewis and Ruche said they "sought the advice" of Butterfield in bringing his district from the coast all the way into downtown Raleigh.

> "Congressman Butterfield acknowledged that the legal deficiencies of the existing First District could be addressed through the addition of either the minority community located In Waite County or the minority community residing In Durham County, Congressman Butterfield believed that including Wake County in his district would give him the opportunity to represent the communities reflected by Shaw University and St Augustine College, Between these two options, Congressman Butterfield advised us that he preferred the addition to his district of the minority population in Wake County, as opposed to the minority population in Durham County,
>
> "We elected to accommodate Congressman Butterfield's preference."

Butterfield agrees he met with redistricting staff in June, but his memory of the meeting differs substantially from the chairs account.

"They called me in about 10 days ago and showed me a map that included my district, but there was no data on it," Butterfield said.

"I was trying to get my bearings. I asked, Where's Shaw, Where's St Aug's?" he recalled. "I was trying to get my bearings and figure out where the core of the African-American community was on that map. That's probably where that came from."

As for being offered a choice between Wake and Durham counties, Butterfield was unequivocal.

"I categorically deny that No one has given me a choice at all, I challenge anyone to document that I said that."

"I have never expressed to the Republican leadership my preference for the district. What 1 asked them to do was to keep my district in place and find 97,500 new people, half of them African-American. There are many ways that it can be done,"

"No one gave me a choice," he reiterated.

Asked for comment on Butterfield's recounting of the meeting, House Redistricting Chairman David Lewis said, "My statement is (an) accurate accounting of our meetings. I stand by my statement."

'A very partisan map'

Butterfield expects the map will fall to win federal pre-clearance under the Voting Rights Act because four VRA counties he used to represent have been removed from his district, even while Raleigh was being added to it.

"The map that I'm looking at, it doesn't protect those minority communities -Wayne, Craven, Beaufort, and Gates," Butterfield said. "Those four counties are

entitled to Section 5 protection, and their vote is going to be completely diluted if this plan is enacted."

Butterfield stressed that the proposal released Friday still has a long way to go: public hearings, a legislative vote, and federal review Ile ahead. But he said he's "very concerned" about the map.

"It's a very partisan map, there's no question about that," he said. "Personally, I think it violates the spirit and the intent of the VRA by packing minority voters into minority districts, Many African-American voters that were in Kissel's district have been shifted over to Mel Watt's [12th] district. There's no justification for that."

NORTH CAROLINA GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27603

May 17, 2011

The Honorable Floyd B. McKissick, Jr.
300 N. Salisbury Street, Room 520
Raleigh, NC 27603-5925

Dear Senator McKissick,

As the redistricting process continues, we have now heard from citizens across North Carolina at public hearings covering 36 sites and counties. On the heels of this endeavor, we wanted to make a special effort to reach out to you to seek your input on some issues that we have identified as important to redistricting plans. Please consider the questions below and respond accordingly. As we continue through the redistricting process, we intend to do so prudently and deliberately. So that we can best consider your response to these questions, we would appreciate hearing back from you in the next ten days. Please direct your response by mail to Senator Rucho's office or by email to Bob.Rucho@ncleg.net. Thank you for your input in the redistricting process, and as always, please contact us at any time with your questions or concerns.

1. What counties were the subject of a finding of liability under Section 2 of the Voting Rights Act in the case of *Thornburg v. Gingles*, 478 U.S. 30 (1986) ("Gingles")?

2. Following *Gingles*, and in all subsequent legislative redistricting plans, has the General Assembly created legislative districts in these counties with a total black population of at least 40 percent or higher?

3. Has there ever been a judicial ruling modifying, overturning, or vacating the judgment entered in *Gingles*?

4. During public hearings held by the House and Senate Redistricting Committees in 2011, several witnesses asked that the General Assembly create redistricting plans that avoid "cracking," "stacking," and "packing." Has the United States Supreme Court defined these terms and if so, in what cases have these terms been defined and how have they been defined?

5. Please explain the elements needed to prove a violation of section 2 of the Voting Rights Act as explained in *Gingles* and as clarified in *Bartlett v. Strickland*, 129 S.Ct. 1231 (2009).

6. Please explain your opinion of the holding by the North Carolina Supreme Court in *Strickland v. Bartlett*, 361 N.C. 491 (2007), with emphasis on the Court's holding that the General Assembly must consider citizen voting age population when deciding whether and where to create majority minority districts.

7. Does the U.S. Census Bureau report citizen voting age population? If not, can the General Assembly reasonably estimate citizen voting age population and, if so, how should that calculation be made?

8. Do African Americans constitute a larger percentage of the citizen voting age population than the voting age population, and if so, why?

9. What is the likelihood that African Americans would constitute a majority of the citizen voting age population if a legislative district in North Carolina

was constructed to have a majority African American voting age population?

10. Has the United States Supreme Court provided any guidance on the number of majority African American districts that can or should insulate the state from any potential lawsuits claiming that legislative plans violate Section 2 of the Voting Rights Act? If so, please cite the case as well as any opinions you may have based upon such cases regarding the number of majority African American State House or State Senate districts that could or should be created by the General Assembly.

11. The North Carolina Supreme Court has clarified constitutional requirements under the North Carolina Constitution for drawing legislative districts. *See Stephenson v. Bartlett*, 355 N.C. 354 (2002) ("*Stephenson I*"); *Stephenson v. Bartlett*, 357 N.C. 301 (2003) ("*Stephenson II*"). Please explain your understanding of how the General Assembly applied the county grouping rules stated in *Stephenson I* and *II* in its creation of the 2003 House and Senate plans.

12. Following the decisions in *Stephenson I* and *II*, in the 2003 legislative plans, how did the General Assembly treat "VRA districts" (as defined in *Stephenson I and II*) relative to county groups? Were VRA districts nested within single counties or county groups or were they separated from county groups and treated as being a group of their own?

13. Did the county grouping principles followed by the General Assembly in the 2003 plans comply with *Stephenson I* and *II*? If not, please explain where and how the plans violated the Stephenson county grouping principles.

14. Please explain your understanding of any criteria in *Stephenson I* and *II* that the General Assembly draws "compact" districts within single counties or county groups. Did the 2003 House and Senate plans comply with this criteria, and if not, please explain the location of any such violation and why you think that a particular district or districts violated this criteria.

15. Please explain your understanding of any criteria established in *Stephenson I* and *II* that the General Assembly consider "communities of interest" in drawing districts within a single county or county group. Did the 2003 House and Senate plans comply with this criteria, and if not, please explain the location of any such violation and why you think a particular district or districts violated this criteria.

Sincerely,

/s/ Bob Rucho

Senator Bob Rucho
Senate Redistricting Chairman

/s/ David R. Lewis

Representative David R. Lewis
House Redistricting Chairman

Questions posed by 2011 House and Senate Redistricting Committees

May 17, 2011 Mailing List

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May 27, 2011

Senator Bob Rucho
NC Senate
300 N. Salisbury Street, Room 300-A
Raleigh, NC 27603-5925

Representative David R. Lewis
NC House of Representatives
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Raleigh, NC 27603-5925

Dear Senator Rucho and Representative Lewis:

We appreciate the opportunity of addressing the set of questions related to legislative redistricting that you sent to us on May 17. You will find our answers in the attached document.

If we can be of further assistance, please call on us.

Sincerely,

/s/ Michael Crowell

Michael Crowell

/s/ Robert P. Joyce

Robert P. Joyce

RESPONSES TO REDISTRICTING QUESTIONS FROM SENATOR ROCHO AND REPRESENTATIVE LEWIS

Michael Crowell and Bob Joyce, UNC School of Government

May 27, 2011

1. What counties were the subject of a finding of liability under Section 2 of the Voting Rights Act in the case of *Thornburg v. Gingles*, 478 U.S, 30 (1986) ("*Gingles*")?

In *Gingles* the United States Supreme Court upheld the finding of Section 2 violations in North Carolina's 1982 legislative redistricting plans. The areas where violations were found included: (1) a four-member Senate district consisting of Mecklenburg and Cabarrus counties; (2) an eight-member House district comprising Mecklenburg County; (3) a five-member House district consisting of part of Forsyth County; (4) a six-member House district comprising Wake County; and (5) a four member House district consisting of Edgecombe, Nash and Wilson counties. In addition, a Section 2 violation was found in eastern North Carolina In the area where a single-member Senate district had been created consisting of all of Bede, Chowan, Gates, Hertford and Northampton counties and parts of Edgecombe, Halifax, Martin and Washington counties. Although African Americans were 55.1 percent of the total population of that district, they were only 46.2 percent of the registered voters, and the court determined that it was possible to create a district with an effective black voting majority in the same general area. Finally, a Section 2 challenge to a three-member House district comprising Durham County was rejected.

Thus the Supreme Court found the three *Gingles* elements – a cohesive minority group, lack of minority success because of racially polarized voting, and the ability to create a reasonably compact minority district – to exist in Mecklenburg and Wake counties; In the combined area of Cabarrus and Mecklenburg counties; in the combined area of Edgecombe, Nash and Wilson counties; in an area comprising most of Forsyth County; and in an area of eastern North Carolina that Included Bertie, Chowan, Edgecombe, Gates, Halifax, Hertford, Martin, Northampton and Washington counties. As noted in the response to Question 3 below, when new majority-black legislative districts were drawn in response to the trial court decision in *Gingles* one of those districts Included parts of Vance and Warren counties,

2. Following *Gingles*, and in ell subsequent legislative redistricting plans, has the General Assembly created legislative districts In those counties with a total black population of at least 40 percent or higher?

We believe the answer is yes but do not have ready access to the documents necessary to confirm our response, the legislative staff can provide a definite answer,

3. Has there ever been a Judicial ruling modifying, overturning, or vacating the judgment entered In *Gingles*?

Although there have been numerous court decisions in the quarter century since *Gingles* that elaborate upon its meaning, *Gingles* has not been overturned and remains the principal case defining the elements of a Section 2 violation.

It may be useful to note how the *Gingles* case concluded. Upon finding a Section 2 violation in January 1984, the trial court gave the General Assembly an opportunity to develop a remedial redistricting plan. The legislature did no in extra session in March 1984 and the trial court approved the remedial plan in April 1984. The redistricting legislation approved by the court provided that the districts would revert to their previous configuration if the Supreme Court reversed the original trial court decision finding violations of Section 2 in the 1982 plans. The Supreme Court reversed only the ruling on Durham County. Thus pursuant to the 1984 legislation all the new districts remained in effect until the next round of decennial redistricting except for the division of Durham County Into three single-member House districts; Durham reverted to a three-member district as provided In the 1982 plan.

The April 1984 trial court order in *Gingles* approved the General Assembly's March 1984 redistricting plan as a remedy for the Section 2 violation but did not specify how long the remedy should remain in effect nor address future redistricting. Nevertheless it appears to be commonly accepted that the legislature remains obligated to maintain districts with effective African American voting majorities in the same areas as decided in *Gingles*, if possible.

The 1984 redistricting pion enacted by the General Assembly, as it existed with the restoration of the Durham multimember district following the Supreme Court's 1986 decision in *Gingles*, created seven majority-black single-member House districts and one majority-black single-member Senate district that had not previously existed, and It Increased the black total population percentage from 55.1 percent to 60.7

percent in the challenged single-member Senate district. Of the six new black-majority House districts, one was comprised of parts at Edgecombe, Nash and Wilson counties; one was in Wake County; and two each were in Forsyth and Mecklenburg counties. One new black-majority Senate district was created in Mecklenburg County. The redrawn Senate district in which the percentage of black population was Increased to 60,7 percent was comprised of Hertford and Northampton counties and parts of Beale, Edgecombe, Gates, Halifax, Martin, Vance and Warren counties.

4. During public hearings held by the House and Senate Redistricting Committee In 2011, several witnesses asked that the General Assembly create redistricting plans that avoid "cracking," "stacking," and "packing." Has the United States Supreme Court defined those terms and if so, in what cases have-those terms been defined and how have they been defined?

The Supreme Court has used each of those terms and explained their meaning in a general sense but has not attempted to set specific objective measures for when cracking, stacking and packing occur. The terms refer to different ways of diluting the voting strength of a group. As the court explained in *Gingles*, though it did not use the terms "cracking" and "packing": "Dilution of racial minority group voting strength may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks Into districts where they constitute an excessive majority." Other cases have used the words "cracking" and "packing" to label the concepts identified in *Gingles*. As stated in *Vieth v Jubellrer*, 541 US. 267 (2004): "'Packing' refers to the practice of filling a

district with a supermajority of a given group or party. 'Cracking' involves the splitting of a group or party among several districts to deny that group or party a majority in any of those districts," The same kind of explanation appears in a variety of Supreme Court opinions such as *Johnson v. DeGrandy*, 512 U.S, 997 (1994), *Voinovich v. Quilter*, 507 U.S. 146 (1993), and *Shaw v. Reno*, 509 U.S. 630 (1993).

The term "stacking" has been used less often and was described in *Shaw v. Reno*, 509 U.S. 630 (1993) as joining "a large minority population concentration . . . with a larger white population." Other sources have used "stacking" to refer to a plan that creates the illusion of a majority black district by concentrating low income blacks with little education (and who are less likely to vote) in the same district with whites who have high incomes and considerable education (and are more likely to vote).

5. Please explain the elements needed to prove a violation of section 2 of the Voting Rights Act as explained in *Gingles* and as clarified in *Bartlett v. Strickland*, 129 S.Ct. 1231 (2009).

While a Section 2 claim involves an analysis of the "totality of the circumstances" which requires consideration of a number of factors, including the history of discrimination in the jurisdiction, the *Gingles* court said the three "necessary preconditions" to a Section 2 challenge to an at-large or multi-member election method arm "First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district. . . Second, the minority group must be able to show that it is politically cohesive. . . Third, the minority must be able to demonstrate that the white majority votes

sufficiently as a bloc to enable it. . . usually to defeat the minority's preferred candidate."

Bartlett v. Strickland further defined what *Gingles* meant by the first element, the minority group being "sufficiently large and geographically compact to constitute a majority in a single-member district." The court said a majority means at least 50 percent of the voting age population, rejecting the argument that the element could be satisfied by showing that a smaller percentage of African Americans might form an effective voting majority when combined with enough white crossover voters.

Justice Kennedy's plurality opinion in *Bartlett v. Stickland* speaks only of "voting age population" or "voting population," and does not specify "citizen voting age population," but Justice Souter's dissent describes the plurality as requiring 50 percent of the citizen voting age population.

6. Please explain your opinion of the holding by the North Carolina Supreme Court in *Strickland v. Bartlett*, 361 N.C. 491 (2007), with emphasis on the Court's holding that the General Assembly must consider citizen voting age population when deciding whether and where to create majority minority districts.

The North Carolina Supreme Court's decision in *Pender County v Bartlett* is the lower court decision that was upheld by the United States Supreme Court in *Bartlett v. Strickland*. The division of Pender County in drawing House legislative districts had been challenged as a violation of the whole-county provision as interpreted in *Stephenson*. The State's defense to dividing Pender was that it was necessary to comply with Section 2 of the Voting Rights Act. The

plaintiffs contended, however, that there was no potential Section 2 violation because the first element of *Gingles* could not be met, as it was not possible to create a reasonably compact district in that part of the state with an African American majority. Blacks were only 42.9 percent of the total population of the district and only 39.4 percent of the voting age population. Consequently the North Carolina Supreme Court had to determine what was meant by a "majority" in the first element of *Gingles*.

The North Carolina Supreme Court held, and the United States Supreme Court affirmed (as discussed in the response to Question 5) that a potential Section 2 violation exists only when the minority group would constitute at least 50 percent of the relevant population in the district. The North Carolina Supreme Court specifically referred to the relevant population as "citizens of voting age," but did not discuss why it used that measure rather than census voting age population (which includes both citizens and non-citizens). As noted above in the response to Question 5, the United States Supreme Court plurality did not use the term "citizen voting age population" in affirming the North Carolina Supreme Court decision, instead referring to "voting age population" or "voting population." Nevertheless, In the absence of a clear rejection of the citizen voting age population standard by the United States Supreme Court, we believe the General Assembly should follow the North Carolina Supreme Court's directive to use citizen voting age population in determining whether Section 2 requires the creation of a legislative district that will consist of something other than a whole county – if the legislature can overcome the difficulties in identifying citizen voting age population as discussed in our answer to Question 7.

7. Does the U.S Census bureau report citizen voting age population? If not, can the General Assembly reasonably estimate citizen voting ago population and, if so, how should that calculation be made?

The 2010 census forms did not include questions about citizenship and the Census Bureau did not include citizenship information in population data it reported for redistricting purpose on March of this year (the P.L. 94-171 block-by-block data).

We are not demographers and our knowledge of census data is limited, but we understand that the Census Bureau does include a question about citizenship on its annual American Community Survey which goes to about 2.5 percent of the households in the country. Based on that sampling the Census Bureau can estimate citizen and non-citizen population, but the estimates are not available at the census block level to match with the P.L. 94-171 data used for redistricting. We also understand that the estimates based on the American Community Survey are for boundaries as defined by the 2000 census and that 2010 census geography may be different in some places.

We are not qualified to respond further as to how the calculation of citizen voting age population should be made, as a demographer is needed for that purpose, but here is the conclusion reached by one scholar who has examined the question: "For purposes of one-person, one-vote or evert one-citizen, one-vote, therefore, the only relevant citizenship data available from the census gives ballpark figures, at best, and misleading and confusing estimates at worst.' Nathaniel Perslly, "The Law of the Census: How to

Count, What to Count, Whom to Count, and Where to Count Them," 32 Cardozo L. Rev. 755, 776 (2010-11).

8. Do African Americans constitute a larger percentage of the citizen voting age population than the voting age population, and if so, why?

We think that the answer is yes for North Carolina, but the General Assembly should consult a demographer for a more reliable response. Our answer is based on the assumption that the largest non-citizen population in North Carolina is Latino (the American Community Survey estimates for North Carolina appear to support that assumption). The Census Bureau reports (see "2010 Census Briefs, Overview of Rate and Hispanic Origin: 2010," March 2011) that nationally 53 percent of people who identified themselves as being of Hispanic origin chose "White" as their race while only 2.5 percent chose "Black or African American" if, as seems likely, most of the non-citizen population in North Carolina are people who identified themselves for the census as being of Hispanic origin; and if the ratio between those in the Hispanic-origin population who chose white and those who chose black for their race is similar to what is reported in the Census Bureau report. It would follow that the exclusion from the voting age population of non-citizens would exclude more whites than blacks and thus would increase African Americans' percentage of the voting age population. We assume, however, that the numbers might vary from one part of the state to another. We repeat that a demographer could provide a more reliable response.

9. What is the likelihood that African Americans would constitute a majority of the citizen voting age population if a legislative district In North Carolina

was constructed to have a majority African American voting ago population?

As explained in the response to Question 8, it would appear to us likely that a district with a majority of African Americans in the total voting age population would have the same or a somewhat higher percentage of African Americans in the citizen voting age population. This answer Is subject to the recommendation stated earlier that you consult a demographer.

10. Has the United States Supreme Court provided any guidance on the number of majority African American districts that can or should insulate the state from any potential lawsuits claiming that legislative plans violate Section 2 of the Voting Rights Act? If so, please cite the case as well as any opinions you may have based upon such cases regarding the number of majority African American State House or State Senate districts that could or should be created by the General Assembly.

We are not aware of any Section 2 litigation involving North Carolina legislative districts other than the *Gingles* case. As things now stand, the only parts of the state where Section 2 clearly has required the drawing of majority African American districts are those areas involved in the *Gingles* lawsuit. in other areas of the state successful Section 2 lawsuits were brought against local governments, establishing that the *Gingles* elements of black political cohesion, racially polarized voting and lark of minority success existed there in the late 1980s and early 19905, but not necessarily establishing that it ever was or currently is possible to create majority African American legislative districts (which would be

considerably larger than districts for county commissioners or city councils) in those areas.

In considering whether Section 2 requires the drawing of majority African American legislative districts today it should be kept in mind that the *Gingles* decision was based on demographics as they existed in 1982 and an election history primarily from the 1960s and 1970s; likewise, the Section 2 litigation involving local governments mostly was concluded by the early 1990s. North Carolina has changed significantly since then, especially in the piedmont urban areas, so that more recent analysis of voting patterns and the other Section 2 elements would be necessary to assert with any confidence that a Section 2 violation might be found in a particular part of the state today.

11. The North Caroline Supreme Court has clarified constitutional requirements under the North Carolina Constitution for drawing legislative districts. *See Stephenson v. Bartlett*, 355 N,C. 854 (2002) ("*Stephenson I*"); Stephenson v. Bartlett, 357 N.C. 301 (2003) ("*Stephenson II*"). Please explain your understanding of how the General Assembly applied the county grouping rules stated in *Stephenson I* and *II* in its creation of the 2003 House and Senate plans.

Our knowledge of the process followed in 2003 is limited by the fact that neither of us was involved in the redistricting efforts of the General Assembly following *Stephenson I* and *Stephenson II*. In preparing our answers to these questions, however, we have spoken with members of the legislative staff who were involved and we have reviewed the January 2004 Section 5 preclearance documents relating to the 2003 House and Senate plans.

We are aware of two considerations that arose in the application of the county grouping rules. The first concerns the drawing of Voting Rights Act ("VRA") districts and the effect that the drawing of those districts has on the remainder of the plan. The second concerns the method of clustering the non-VRA counties.

Formation of VRA districts. Every decision in the drawing of a particular district affects at least one other district, and in many cases may affect several districts. *Stephenson I* directs that "legislative districts required by the VRA shall be formed prior to the creation of non-VRA districts." The choice of how to draw districts that comply with the VRA will have an effect on the drawing of non-VRA districts.

It appears that the General Assembly applied literally the directive that VRA districts be "formed prior" to non-VRA districts. In the 2004 House preclearance documents, this explanation is given:

> "Prior to the [November 2003 redistricting) special session, the co-chairs (of the redistricting committee) consulted with Individual Representatives about their districts. All black Representatives were consulted about the effect of the Stephenson requirements and the redrawing of their districts. Each black Representative met separately with either Speaker (Jim) Black or Representative Martha Alexander, the co-chair of the House Redistricting Committee, plus the technical staff to discuss that Representative's district and negotiate the boundaries of the district. Black Representatives typically met numerous times with House leadership in a back-and-

> forth process until the Representative expressed satisfaction with the district as revised."

The 2004 Senate preclearance documents say that "the plan was crafted under the guidance of the Senate's black members, both with regard to the design of their own districts and also with regard to the design of the plan as a whole." In his explanation of the map-creation process to a meeting of the Senate Redistricting Committee on November 24, 2003, co-chair Senator Daniel Clodfelter said, "in preparing the map, we first drew those districts that were required to comply with the Voting Rights Act."

Clustering of counties. Stephenson I directed that once the legislature had drawn VRA districts and had drawn districts in single counties that were the right size for districts, then dusters were to be created by "grouping the minimum number of whole, contiguous counties" necessary to meet the one-person-one-vote population deviation standard, no that "only the smallest number of counties necessary to comply with the [the one-person-one-vote population deviation standard] shall be combined."

A question of interpretation arose with respect to this requirement. By one interpretation, the requirement meant that, once clustering began, the General Assembly must first create the maximum number of two-county clusters possible, then the maximum number of three-county clusters, and soon, until at counties were grouped into clusters. By another interpretation, however, the requirement meant that, once clustering began, the General Assembly must draw clusters in a way to maximize the number of dusters, in an effort to keep as many counties as possible whole. The concern was that

under the first interpretation the end result would be a large, multi-county cluster consisting of counties which could not be worked into two-county or three-county or other smaller clusters.

In Stephenson II, the Supreme Court cited with apparent approval the trial court's finding that the 2002 legislative redistricting, undertaken in response to *Stephenson I*, contained a "failure to create the maximum number of two-county groupings."

When asked, in effect, at a meeting of the Senate Redistricting Committee on November 4, 2003, which interpretation is correct, staff attorney Bill Gilkeson, since retired, after citing the language in *Stephenson I* and the trial court finding noted above, said, " I'm not sure the court has completely specified what it means there." He said, further, "[T]he two-county combinations would have to be put into a statewide plan. And it may be that it's impossible to put every two-county grouping into a. statewide plan. That's about the best I can do."

Senator Clodfelter, at the November 24, 2003, redistricting committee meeting cited above, said:

> "[W]e proceeded to comply with the Stephenson requirement by drawing districts that minimized the number of counties that were divided and the number of traverses of county boundaries in creating those districts . . . [W]e also followed the mandate of Stephenson I and II to maximize the number of clusters that were two counties or three counties and to minimize the number of clusters that were larger than two counties or three counties."

As stated earlier, the two of us were not involved in the legislature's interpretation of *Stephenson I* and *Stephenson II* or in the development of the redistricting plans. Our understanding of how the General Assembly applied the county grouping rules is limited to what we have described here.

12. Following the decisions in Stephenson I and II, in the 2003 legislative plans, how did the General Assembly treat "VRA districts" (as defined in *Stephenson I* and *II* relative to county groups? Were VRA districts nested with single counties or county groups or were they separated from county groups and treated as being a group of their own?

The *Stephenson I* decision directed that "[tie the maximum extent practicable, such VRA districts shall also comply with the legal requirements of the [whole-counties provision], as herein established for all redistricting plans and districts throughout the State." In the November 24, 2003, redistricting committee meeting, Senator Clodfelter said:

> "[W]hat our Supreme Court told us in *Stephenson* was that in drawing Voting Rights Act districts we could not simply willy-nilly draw the map in any way we wished, but even in drawing those districts, we needed to be mindful of and to try to respect the criteria in the state Constitution and the map that we have before you does so, Even in drawing-the Voting Rights Act districts, Sea tried to observe the principles of keeping counties whole, of minimizing the size of county clusters, and of providing compact districts. And I think we have done that."

We do not know the processes used by the House or Senate map drawers to effectuate maximum compliance with the Stephenson criteria in the drawing of the VRA districts. We have not undertaken an Independent analysis of the maps to determine whether VRA districts were nested with single counties or county groups or were separated from county groups and treated as being a group of their own.

13. Did the county grouping principles followed by the General Assembly in the 2003 plans comply with *Stephenson I* and *II*? If not, please explain where and how the plans violated the *Stephenson* grouping principles.

The answer to this question turns on two factors.

The first factor is the adoption of one or the other of the two possible interpretations of the *Stephenson I* and *Stephenson II* grouping requirement. Do those decisions require the creation of the maximum number of two-county clusters, then the maximum number of three-county clusters, etc? Or do those decisions require the splitting of the fewest counties?

The second factor arises once that interpretation question is answered. Has the plan as drawn best meet the requirements of the interpretation?

We were not involved in advising the General Assembly as to the proper Interpretation of the *Stephenson* decisions nor in the development of the plans adopted by the General Assembly for the House and Senate in 2003. We express no opinion on the proper interpretation, except to say that we believe that it is within the province of the General Assembly, in the first instance, to determine the proper interpretation. We have not attempted to assess the

Maps as adopted to evaluate whether, they best meet the requirements of either interpretation and believe that this question is best addressed to the litigants in *Stephenson*.

14. Please explain your understanding of any criteria in *Stephenson I* and *II* that the General Assembly draws "compact" districts within single counties or county groups. Did the 2003 House and Senate plans comply with this criteria, and if not, please explain the location of any such violation and why you think that a particular district or districts violated this criteria.

In *Stephenson I*, the Supreme Court said that in the dividing of a single county into multiple districts of the appropriate population, the resulting districts "shall be compact." It also said that in the drawing of districts within county clusters, "compact districts shall be formed." The *Stephenson I* decision gave no guidance on how compactness of districts is to be determined. Although various mathematical models exist for measuring compactness, none were mentioned by the court.

In *Stephenson II*, the Supreme Court cited with apparent approval the trial court's finding that the 2002 legislative redistricting, undertaken in response to *Stephenson I*, contained "violations of the Stephenson mandate that districts shall be compact." The trial court found those violations on the basis of a visual review of the shapes of the offending districts (for example, "District 11. . . is not compact. Its eastern boundary has been drawn in such a manner that it runs southward, then swings to the northwest, then. . . curves around a portion of Nash County"). The Supreme Court apparently embraced this method for

determining compactness, *i.e.*, a visual review of the shapes.

15. Please explain your understanding of any criteria established in *Stephenson I* and *II* that the General Assembly consider "communities of interest" in drawing districts within a single county or county group. Did the 2003 House and Senate plans comply with this criteria, and if not, please explain the locution of any such violation arid why you think a particular district or districts violated this Criteria.

The Supreme Court in *Stephenson I* said that in the drawing of districts within county clusters, "communities of interest should be considered in the formation of compact and contiguous electoral Districts." The way the court expresses this requirement contrasts noticeably with the way it expressed the compactness requirement. While the court said that "districts *shall* be compact" and that "compact districts *shall* be formed," it said only that communities of interest "*should be considered.*"

The *Stephenson I* decision gave no further guidance on how communities of interest were to be taken into account, in *Stephenson II*, the Supreme Court cited with apparent approval the trial court's finding that the MN legislative redistricting, undertaken in response to *Stephenson I*, contained violations. of the requirements of the equal protection clause in that the requirements of keeping local governments subdivisions or geographically based communities of interest [together] were not consistently applied," The trial court modified, for instance, the legislature's drawing of two districts "to eliminate the splits of these boundaries in keeping with the preservation of local governments as communities of interest" and in another instance it modified a district to include the

county seat within it district "anchored" by the county, "to better preserve 'communities of interest.'" The Supreme Court apparently embraced this application of the "communities of interest" requirement to the splitting of political jurisdictions, but beyond that it has given no further guidance.

EXHIBIT N

Expert Report of Thomas B. Hofeller, Ph.D.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA DURHAM DIVISION

Civil Action No. 1:13-CV-00949

DAVID HARRIS; CHRISTINE BOWSER; AND SAMUEL LOVE,

Plaintiffs,

v.

PATRICK MCCRORY, in his capacity as Governor of North Carolina; NORTH CAROLINA STATE BOARD OF ELECTIONS; and JOSHUA HOWARD, in his capacity as Chairman of the North Carolina State Board of Elections,

Defendants.

EXPERT REPORT OF THOMAS B. HOFELLER, Ph.D.

COMMONWEALTH OF VIRGINIA
County of Fairfax

Thomas Brooks Hofeller declares the following:

1. I am of the age of majority, am competent to make this affidavit, and, except where specifically stated otherwise, have personal knowledge of the matters stated herein.

2. I set forth here a summary of my experience that is most relevant to this testimony. The full range of my professional qualifications and experience is

included in my resume, which is attached as Exhibit 1.

3. I am a Partner in Geographic Strategies, LLC, located in Columbia, South Carolina. Geographic Strategies provides redistricting services including database construction, strategic political and legal support planning in preparation for actual line drawing, support services and training on the use of geographic information systems (GIS) used in redistricting, analysis of plan drafts, and actual line-drawing when requested. The corporation and its principals also provide litigation support.

4. I hold a Ph.D. from Claremont Graduate University, where my major fields of study were American political philosophy, urban studies and American politics. I hold a B.A. from Claremont McKenna College with a major in political science.

5. I have been involved in the redistricting process for over 46 years, and have played a major role in the development of computerized redistricting systems, having first supervised the construction of such a system for the California State Assembly in 1970-71.

6. I have been active in the redistricting process leading up to and following each decennial census since 1970. I have been intimately involved with the construction of databases combining demographic data received from the United States Census Bureau with election results which is used to determine the probable success of parties and minorities in proposed and newly-enacted districts. Most of my experience has been related to congressional and legislative districts, but I have also had the opportunity to analyze municipal and county-level districts.

7. I served for a year and one half as Staff Director for the U.S. House Subcommittee on the Census in 1998-99. I have extensive experience on all aspects of decennial census activities, including both its data tabulations and geographic hierarchy.

8. I was Staff Director of the Subcommittee when the Census Bureau was proposing to substitute the American Community Survey (ACS) for the use of the decennial long form questionnaire in the 2000 and previous decennial Censuses. The long form was not used in the 2010 Decennial Census. The ACS program was initiated during the previous decade and this is the first redistricting cycle in which it is being used.

9. I have drafted and analyzed plans in most states including, but not limited to, California, Nevada, Arizona, New Mexico, Colorado, Texas, Oklahoma, Kansas, Missouri, Minnesota, Wisconsin, Illinois, Indiana, Ohio, Arkansas, Mississippi, Louisiana, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, New York, New Jersey and Massachusetts.

10. In this decennial round of redistricting, I have already been intensely involved in Texas, Tennessee, Arizona, Alabama, North Carolina, Virginia and Massachusetts. As much of my consulting activities involve work in states subject to the provisions of Sections 2 and 5 of the Voting Rights Act (VRA), I am very familiar with the data used to analyze the expected performance of redrawn and newly-created minority districts. I regularly advise clients about the characteristics of minority districts in their plans, and whether or not they meet the requirements of both Sections 2 and 5 of the Voting Rights Act. I am familiar with the Shelby County decision of the United States Supreme Court and that Section 4 of the VRA has been

ruled unconstitutional resulting in all states having been released from compliance of Section 5 of the VRA.

11. I have given testimony as an expert witness in a number of important redistricting cases including, but not limited to, *Gingles v. Edmisten*, 590 F. Supp. 345 (N.D.N.C. 1984), *aff'd in part and rev'd in part Thornburg v. Gingles* 478 U.S. 30 (1986); *State of Mississippi v. United States*, 490 F. Supp. 569 (D.C.D.C. 1979); *Shaw v. Hunt*, 92-202- CIV-5-BR, U.S. District Court for the Eastern District of North Carolina, Raleigh Division (1993-4); *Ketchum v. Byrne*, 740 F.2d 1398, *cert. denied City Council of Chicago v. Ketchum*, 471 U.S. 1135 (1985), *on remand, Ketchum v. City of Chicago* 630 F. Supp. 551 (N.D. Ill. 1985); and *Arizonans for Fair Representation v. Symington*, CIV 92-0256, U.S. District Court Arizona (1992), *aff'd mem. sub nom. Arizona Community Forum v. Symington*, 506 U.S. 969 .(1992).

12. I have been extensively involved previously as an expert and redistricting plan drafter in the State of North Carolina since the 1980s.

13. I have done considerable work regarding compactness as a criterion in redistricting maps, including but not limited to a work I coauthored in *The Journal of Politics*, "Measuring Compactness and the Role of a Compactness Standard in a Test for Partisan and Racial Gerrymandering." *Id.*, Vol. 52, No. 4 (Nov., 1990), pp. 1155-1181 (with Richard G. Niemi, Bernard Grofman, and Carl Carlucci).

14. I have been retained by counsel representing the State of North Carolina in this litigation.

15. My consulting and expert witness fee is $295 per hour plus expenses.

16. In constructing and analyzing 2011 Enacted North Carolina Congressional Plan, along with all other congressional maps, I used a portable Toshiba laptop computer running Microsoft Windows 7 system software and a Geographic Information System specifically developed for redistricting by Caliper Corporation, a Newton, Massachusetts firm, called Maptitude for Redistricting (See Map 1). Maptitude for Redistricting was widely used throughout the United States in both the 2000 and 2010 redistricting cycles. It is recognized by almost all redistricting experts as the industry standard, even though a number of larger states have elected to develop their own redistricting software (Such as Texas, Florida, and New York). Maptitude incorporates and merges the 2010 Decennial Census data produced by the United States Bureau of the Census, a computerized mapping file called TIGER (Topographic Integrated Geographic Encoding Reference), also developed by the U. S. Census Bureau, and election and registration data received from non Census Bureau sources. In North Carolina, the election and registration data were developed by the North Carolina General Assembly's Legislative Services Office

17. I have been asked to evaluate the Export Report submitted by Dr. Stephan Ansolabehere on behalf the Plaintiffs in which he concluded that race was the predominant factor in constricting CD's 1 and 12 in Rucho-Lewis Congressional Plan 3 enacted by the North Carolina General Assembly on July 28, 2011. I disagree with his conclusion and have determined that the evidence he presets which leads to his conclusion is not sufficient to support such a conclusion.

18. The first error that Dr Ansolabehere makes is failing to evaluate the 2011 Rucho-Lewis Congress3

Plan (hereinafter referred to as the "New Plan" or "New District xx") in its entirety. While he does present and discuss maps demonstrating the changes in the boundaries of the 2001 and 2011 Districts 1 and 12. He does not consider all of the other factors that influenced how both sets of Districts were drawn, substantially ignoring the plans as a whole. New Districts 1 and 12 were not drawn in a policy vacuum. The legitimate policy goals of the General Assembly influenced the construction of all 13 districts in the New Plan. The same was true for the 2001 Congress Zero Deviation Plan (hereinafter referred to as the "Old Plan" or "Old District xx") which he contrasts with the New Plan. The Old Plan was also drawn with its own set of policy goals driving the New Plan. They just were not the exact same goals. The primary differences were political, and dealing with the evolution of the legal requirements of the Voting Rights Act (VRA) over the decade between the drafting of the Old and New Plans.

19. Dr. Ansolabehere failed to note that the 1st District and the 12th Districts are markedly different in the political and demographic polices which determined their construction. District 1 must be characterized as a "VRA Section 2 Minority District", while District 12 is correctly characterized as a "political" district along with the remaining 11 districts. This a vital distinction which is a result of a long series of federal court rulings, the most recent being the *Cromartie* decisions and the *Strickland* decision. One simply cannot make an evaluation of the New Plan without taking these distinctions into account.

20. The 1st District has been treated as a Section 2 district in the last three redistricting cycles. Even

though other policy goals played an important role in the location of the 1st District, obtaining U. S. Department of Justice (DOD preclearance was always an important policy objective. But the politics governing the construction of the surrounding districts, as well as the population shifts among all the districts in both plans were also a major consideration for the General Assembly. This was especially the case in 2011 because of differences of the population growth rates of the rural and urban areas of the State; which became more pronounced in the decade between the 2000 and 2010 Decennial Censuses than in the previous decade. The Old District 1 was almost exclusively rural, and became severely under populated between 2000 and 2010. The General Assembly's expectation was that this growth trend would continue through this present decade. Thus, adding urban population to the New District 1 was determined to be the best way to stabilize the deviations between all the districts as this decade unfolds.

21. Population growth is not homogeneous across the state. Each new map needs to be drawn to take these uneven growth patterns into account. In fact this is the underlying U. S. Constitution's mandate is the driving factor for both the reapportionment and redistricting of United States' congressional districts. The one-person, one vote mandate, coupled with other individual state redistricting criteria and policy choices, including political choices, always result in shifting district boundaries, some of which can be quite large.

22. One good example of an affect caused by shifting population is the placement of the portion of the section of the New and Old District 12 which

connects the heavily Democratic sections of Mecklenburg, Guilford and Forsyth Counties together through Cabarrus, Davidson and Rowan Counties. The "connector", as it was commonly referred to in the drafting process, was placed further to the east in the New 12th District. This was done to balance the populations of the surrounding districts and avoid crossing unnecessary county boundaries in that area of the State. This also resulted in 60,527 less people in these three connector counties being incorporated into the New 12th District, thus allowing more heavily Democratic precincts in Forsyth, Guilford and Mecklenburg Counties to be added to the New District 12. This, in turn, allowed Republican political percentage to be higher in the new 6th, 8th, and 9th Districts. This is commonly referred to as the "ripple effect' in redistricting circles. This effect influences the location of many districts in any decennial redistricting.

23. Political control of the redistricting process can also become an overarching factor. This is especially true when control shifts between the two political parties. This was the case in North Carolina when, in 2010, the Republicans took control of both chambers of the General Assembly (since the Governor has no role in North Carolina redistricting). Politics was the primary policy determinant in the drafting of the New Plan. The same was true of the Old Plan except that the Democrats political policy choices were different. Professor Ansolabehere did not take any of these factors into account in his report.

24. Dr. Ansolabehere's factual conclusion can be summarized as follows:

25. The General Assembly split 5 more cities in New District 1 and twice as many counties (9 versus

18). Dr. Ansolabehere fails to mention that District 12 in the New Plan splits the same number of counties and fewer cities than the Old Plan.

26. Dr. Ansolabehere asserts that New Plan's 1st and 12th Districts are "substantially" less compact than the equivalent districts in the Old Plan. I disagree with his evaluation of that significance, especially with regard to the New 12th District. I shall discuss compactness further below.

27. His envelope analyses, as well, as his measurement of the characteristics of the areas of the old districts moved out of the new districts, and the areas not in the old districts moved into the new districts, essentially demonstrate nothing more than that new 1St and 12th Districts have higher African-American Voting Age Population percentages (referred to TBVAP in North Carolina) than the corresponding districts in the Old Plan. This is already obvious from the data constrained in the district reports supplied by the State. . .

28. Based on these facts alone, and taking none of the other factors guiding the drafting of either the old or new plans into account, he has determined that the drafting of the New Plan must have primarily guided by an impermissible racial intent and effect.

29. I strong assert that the evidence Dr. Ansolabehere presents is insufficient and inconclusive for him to arrive at his conclusion that "race was the predominant factor in constricting CDs 1 and 12 in" the New Plan. There was much, much more involved drafting the New Plan. I know this because 1 was intensely involved in the entire process.

30. Both Districts 1 and 12 must be examined in the context of neighboring districts and the fact that each

district has its own history since the inception of the one person, one vote rulings of the U. S. Supreme Court.

31. District 1 was and is clearly identified as a "Section 2 district" and must be constructed in that context. District 12, since the U. S. Supreme Court's decision in *Easley v. Cromartie*, has been treated as a strictly political district, although the fact that Guilford County, into which District 12 enters, in both the Old and New Plans, made it subject to the preclearance provisions of Section 5 of the VRA.

32. Gaining DOJ preclearance was a major concern of the General Assembly in light of the State's previous preclearance experiences. Its strategy was justified when the New Plan was rapidly precleared in late 2011.

33. While I certainly do not challenge the data he presents, I do disagree with his sole dependence on registration data for political analysis. My experience in drafting and evaluating plans has continued to enforce my expert opinion that the best predictor of future election success is past voting behavior, not registration. This is clearly the case as more and more voters are tending to register non-partisan or independent. For some reason, Dr. Ansolabehere has opted to ignore past election results.

34. The Supreme Court, in its remand of the *Cromartie* case (*Easley v Cromartie*, 532 U.S. 234, 244 (2001)), agreed with this premise. Justice Breyer wrote for the Court that "the primary evidence upon which the District Court relied for its 'race, not politics,' conclusion is evidence of voting registration, not voting behavior; and that is precisely the kind of

evidence that we said was inadequate the last time this case was before us."

35. Dr. Ansolabehere also notes that District 1 and 12 in the New Plan 3 have lower Reock Compactness Scores and seems to infer that this is evidence of the use of race as predominant factor in constructing the New Plan. Of course the Reock measurement is only one of many such compactness evaluations. Once again, by neglecting the entire context of the plan, he does not examine what it is about the shapes of the districts which result in these lower scores.

36. In footnote 1 of page 5 of Ansolabehere's Report, he states that the Reock score of a perfectly square district would be .637. I add that the Reock score for a circular district would be 1.00.

37. The difference in Reock scores between the Old and New 12th Districts (.071 in the New Plan and .116 in the Old Plan) is .055, This difference, in comparison to the score of a square district (.637), is hardly significant enough to imply racial motivation (see Ansolabehere Exhibit 1). The fact is that both versions of the 12th District have miserable scores. The Reock compactness scores for the Old and New District 1 (.390 and .294 result in a difference of .096. This difference is, as Dr. Ansolabehere states, "noticeable", but hardly significant. These are not unusually low scores. The difference between these two score is not significant enough to support a conclusion of race as the predominant factor in the construction of the New District 1.

38. If one compares the mean Reock compactness scores for the Old and New Plans for all districts, of .37 and .30 respectively, the mean score for the New Plan is only .01 lower than the mean score for the New

Plan, and .07 lower than the mean score for the Old Plan. In addition, 5 of the remaining 12 districts in the New Plan have lower Reock scores than the New District 1. They are New District 4 (.17), New District 6 (.24), New District 9, (.17), New District 11 (.26) and New District 12 (.07). All 5 of these new districts were drawn without race as a factor. For these reasons, compactness is not significant enough factor to support a conclusion of race as the "dominant factor" in the construction of the New Plan in its entirety.

39. There are alternative policy explanations which also affected the Reock compactness scores for the 1st and 12th districts in New Plan. The 12th District, which was constructed to raise its Democratic election percentage (using President Obama's percentage in 2008) while, at the same time strengthening the Republican percentages in the surrounding districts (5, 6, 8, and 9), necessitating including more strong Democrat VTDs into the new 12th District. One source of these new strong Democrat VTDs was northeast Greensboro. . . The Democrats, in the Old Plan had "cracked" the African-American community in Greensboro, dividing it between Old Districts 12 and 13. This was done to make both the Old 12th and 13th Districts strongly Democratic, which was not the political policy objective of the 2011 General Assembly. The General Assembly, mindful that Guilford County was covered by Section 5 of the VRA, determined that it was prudent to reunify the African-American community in Guilford County. This could avoid the possibility of a charge of fracturing that community and, inhibiting preclearance by DOJ under Section 5. This extension of the New 12th District further to the northeast into Guilford County caused the circumscribing circle around the district to increase to increase in diameter and lowered the Reock Score. The

General Assembly also wanted to remove strong Democratic VTDs from New District 6.

40. In the case of New District 1, the policy objectives were much the same in terms of political choices. The General Assembly's goal was to increase Republican voting strength in New Districts 2, 3, 6, 7 and 13. This could only be accomplished by placing all the strong Democrat VTDs in either New Districts 1 or 4.

41. When the Plaintiffs in Easley v Cromartie asserted a safe Democratic Old District 12 could have been created with a lower percentage of African-Americans, Justice Breyer, writing for the majority, stated that "unless the evidence also shows that these hypothetical alternative districts would have better satisfied the legislature's other nonracial political goals as well as traditional nonracial districting principles, this fact alone cannot show at improper legislative motive. After all, the Constitution does not place an affirmative obligation upon the legislature to avoid creating districts that turn out to be heavily, even majority, minority." (*Cromartie* 11 at 249) The same principle applies to the Republican's desire to create a stronger Democratic New 12th district to satisfy their own political goals.

42. What was uniquely different in the case of District 1 was that this District had been determined by the Supreme Court to be a "VRA Section 2" district and was vulnerable to a challenge of retrogression under VRA Section 5. Additionally because of the U. S, Supreme Court's *Strickland* decision in 2009, the General Assembly determined that the New District I had to be a majority-minority district which required an African-American TBVAP in excess of 50%. The resulting TBVAP of 52.26% for New District 1 is

hardly excessive in terms of this majority-minority requirement, especially since the Old District 1's TBVAP was 48.34% - only 3.92% lower. Nor would this difference sustain a charge of using race as the predominant criterion as Plaintiffs assert.

43. Taking into account all these factors, it is my expert opinion that the geographic shapes of New Districts 1 and 12 clearly do not support a conclusion that race was "the predominant factor" in the construction of New Districts 1 and 12.

44. I now turn to Dr. Ansolabehere's examination of cities and counties split by the borders of the New Plan's Districts 1 and 12. A listing of split cities and towns in both the old and new versions of Districts 1 and 12 may be found in Tables 1 and 2.

45. New District 1 actually splits 19 counties (Dr. Ansolabehere missed one.), while the Old District 1 splits 10 counties. Both the Old and New 12th Districts split the same 6 counties (Cabarrus, Davidson, Forsyth, Guilford, Mecklenburg and Rowan) I will explain the split counties and the configuration New District 1 later in this report But certainly split counties are not an issue for the New District 12, as all 6 counties are split in both the Old and New Plans.

46. Dr. Ansolabehere is correct in counting the number of split cities in New District 12. There are 13 splits. What he neglects to mention is that the Old Plan splits 11 of those same towns (the Old District 12 does not split Wallburg and East Spencer), but Splits 5 additional cities and towns (Davidson in Mecklenburg County between Districts 9 and 12; Midway in Davidson County between Districts 6 and 12; Spencer in Rowan County between Districts 6 and

12; Walkertown in Forsyth County between Districts 5 and 12; and Welcome in Davidson County between Districts 6 and 12) for a total of 16 splits. This certainly does not support an assertion that number of split cities in New District 12 should be a racial issue.

47. Dr. Ansolabehere incorrectly counted the split cities and towns in New District 1. He counted Rocky Mount twice so the correct number of splits is 21, not 22. Once again Dr. Ansolabehere did not give a count of the 16 split cities and towns in the Old District 1. Of the 21 cities and towns split in the New District 1, 8 are also split in the Old District 1. These are Dortches in Nash County, Goldsboro in Wayne County, Greenville in Pitt County, Kingston in Lenoir County, New Bern in Craven County, Rocky Mount in Edgecombe and Nash County; Washington in Beaufort County; and Wilson in Wilson County. Eight additional cities and towns are split in the Old District 1 which were not split in the New District 1. They are Ayden in Pitt County between Districts 1 and 3; Farmville in Pitt County between Districts 1 and 3; Havelock in Craven County between Districts 1 and 3; Henderson in Vance County between Districts 1 and 2; Nashville in Nash County between Districts 1 and 2; Oxford in Granville County between Districts 1 and 13; Sharpsburg in Wilson and Nash Counties between Districts 1 and 3; and Whitaker in Nash and Edgecombe County between Districts 1 and 2.

48. New District 1 splits 21 cities and towns while Old District 1 split 16 cities and towns, for a difference of 5 splits. Three of those additional 8 split cities or towns split in the New District 1 were minor splits. The cities involved had extremely small population splits. Edenton had zero population in the portion of the city split off. Grimesland had 4 persons in the

portion of the city split off. Both the Edenton and Grimesland split involved non-contiguous pieces for those cities. Hertford had 8 persons in the portion of the city split off, and the split was caused by a VTD boundary. In North Carolina, VTDs frequently spilt of portions of cities or towns and combine those areas with unincorporated territory. So if those three splits are discounted, it means that the New District 1 only has 2 more significant city or town splits than the Old District 1 In my expert opinion 2 to 5 city and town splits in a district with over 700,000 people is not a sufficient difference to support a conclusion of race as the predominant factor in the construction of new District l's.

49. On page 8 of his report Dr. Ansolabehere correctly reports the African American Total Voting Age (TBVAP) percentages of the Old and New 1st and 12 Congressional Districts. Old District 1 has a BTVAP of 48.6% and New District 1 has a BTVAP of 52.7% which is a 4.1% difference. Given the requirements of *Strickland* to build majority-minority districts at level 50% TBVAP or more (a requirement which was not imposed by the U. S. Supreme Court when the Old Plan was enacted in 2001), a 52.7% BTVAP district is neither excessive nor unreasonable for New District 1. The General Assembly could have spread a small number of Census Voting Districts (VTD) with high Democrat election percentages to one or more of the surrounding districts (mostly likely the New 4th District) and brought District l's percentage a little closer to 50%, but a TBVAP of 50.1% is much lower than the same percentages which were present in both the old and new legislative districts in that same area of northeastern North Carolina. These were districts in which African-American legislative incumbents felt that it was necessary for candidates of

preferred choice to be elected in that area. It was the General Assembly policy choice to seek the safe harbor of creating a majority-minority district and not to chance a successful challenge that the New District 1 would be challenged as having a TBAVP which was too weak. Given that any plan that General Assembly enacted, which also accomplished the majority party's political goals, was highly likely to be challenged in court, it was foolhardy to risk being embroiled in an endless argument over which percentage under 50% would be the correct number, or that the composition of the African-American VAP would be drawn from a geographic area not of the minority party's choice. Would the benchmark percentage of 48.6% be acceptable for the geographically reconfigured 1st District? Would it have to be half a percent higher or lower? With the confusion about multiple racial bloc voting analyses leading to multiple interpretations leading to endless competing expert opinions. It was, and is my expert opinion that it was acceptably prudent to turn to the 50%+ "safe harbor".

50. Another issue raised by the incumbent from Old District 1 was that the New District 1 should have the same number of adult African-Americans drawn from counties covered by Section 5 of the VRA, as were contained in the Old District 1. This was difficult to accomplish and still to leave the same section of Durham County in the New District 1; a choice which was necessary to accomplish the General Assembly's legitimate political and demographic goals for the New Plan as a whole. Thus, New District 1 was further reconfigured to satisfy a minority Congressman's request. This reconfiguration was also acceptable to the Republican incumbents in the surrounding districts.

51. The other policy objective of the General Assembly guiding the construction of New District 1 was the goal of decreasing the likelihood that come 2020, District 1 would once again be significantly underpopulated in terms of the 2020 Decennial Census numbers. The Old District 1 was underpopulated by 97,563 persons according to the 2010 Census. The desire to narrow the expected population deviations between all the districts in the New Plan as the decade unfolds was a neutral policy criterion. The General Assembly achieved that policy goal by adding a large urban population from Raleigh-Durham County area into District 1.

52. Certainly, given the fact that District 1 it a Section 2 district, race plays a role among the many other policy issues influencing the configuration of the New District 1. However, a detailed examination, taking into account all the policy choices guiding the construction of all the districts in the New Plan, as well as those policy issues unique to District 1, in my expert opinion simply do not support a conclusion that race was the predominant factor in the construction of New District 1.

53. Dr. Ansolabehere's "envelope of counties" analysis is most puzzling of all. This is the first time, in my 48 years of redistricting experience that I have ever heard of this method of analysis. Several questions come immediately to mind. It is not clear what Dr. Ansolabehere's explanation is for why the outer perimeter of counties either partially or entirely contained in any given district has any relevance, other than a constitutionally mandated whole-county criteria requirement, to an evaluation of any single district. This method of analysis would produce significantly different results if a rural-based minority

district expanded into even a small portion of a large metropolitan county. For example, Dr. Ansolabehere's envelope method would yield much different results if New District 1 included even one precinct from Wake County. It is not clear that this method of analysis is universally helpful across all 50 states. The envelope method would yield highly negative results in a state such as Illinois, where the envelope of counties containing the Chicago metropolitan areas' 4 majority-minority was just expanded in 2011 to include Cook, DuPage, Kankakee and Will Counties, which constitute an envelope containing 6,902,608 persons, which is 72% of the 2010 population of all North Carolina?

54. Why not just state that, in the construction of the New 1st Congressional District, in which the General Assembly's policy goals included compliance with Section 2 and 5 of the VRA as well as politically strengthening the Republican characteristics of all but 1 of the surrounding districts (New District 4), and that the Old District 1 was severely underpopulated, that African-Americans had a greater chance of being moved into the New District 1 than non-Hispanic Whites? In my expert opinion, this is an overcomplicated way of stating the obvious and avoiding other relevant factors at work in North Carolina's 2011 redistricting cycle. The analysis produces 5 tables which I summarized in my Table 3. Nonetheless, this numeric presentation adds little to the discussion why these changes were made.

55. Another weakness Dr. Ansolabehere's county envelope analysis is that it depends on registration data, rather than election history data. Once more I must clearly state that in the community of experts who actually draft plans, the industry standard is

election data, not registration data. This is becoming even more the case as the number of voters registering independent or non-partisan continues to increase. - This is the same error that was identified by the Supreme Court in *Cromartie I*

56. I turn last to Dr. Ansolabehere's analysis of the political and demographic characteristics of the areas common to both the New and Old 12th Districts (the "core" areas" in Dr. Ansolabehere's Tables 10 and 11), the areas from the Old 12th District not contained in the New 12th District (referred to as "out of CD" in Dr. Ansolabehere's Tables 10 and 11), and the areas contained in the New District 12 not contained in the Old District 12 (referred to as ""into CD" in Dr. Ansolabehere's Tables 10 and 11).

57. Dr. Ansolabehere's Tables 10 and 11 speak for themselves at far as the numbers contained therein but, once again, are improperly based on a comparison of census data with voter registration data. The proper comparison would be to compare census data to actual election results. It is unclear whether or not Dr. Ansolabehere used whole VTD's or just the portion of the split VTD's contained in the two districts in the New Plan. In either case, election results are the industry standard for use both in the construction and analysis of redistricting plans.

58. The other flaw in Dr. Ansolabehere's use of - Tables 10 and 11 is that his analysis is not complete with regard to even the demographic data because, once again, he does not take into account the General Assembly's other legitimate policy choices which influenced the construction of New Districts 1 and 12 in the context of the entire map. It is obvious that both the New Districts 1 and 12 have TBVAP percentages which are higher than in the corresponding old

districts. It is also obvious to anyone who has actually drawn redistricting plans that the only way this could happen would be that the areas removed from the old districts would have to have lower African-American percentage than those added into the new districts. Otherwise the percentage in the new districts would not be higher. The relevant question is not that his happened, but why it was done.

59. I need not repeat the discussion of the reasons that New District 1 was constructed as it was which may be found in paragraphs 36 through 39 above. It is sufficient to say that race was not the primary criterion.

60. In the case of New District 12, some further comment is required. A better way to look at the changes between the 2001 and 2011 12th Congressional Districts, is to examine the actual maps and the actual aggregate demographic and election data for the "core area", the "Into CD" area, and the "Out of CD" area. This can only be done using a computerized redistricting system.

61. I have provided a map which shows the geographic relationship of the 2001 District to the 2011 District. Map 1 show the areas contained in both districts in three colors. The green areas are common to both the old and new versions of District 12. The blue areas are only contained in the New District 12, while the red areas were only contained in the Old District 12.

62. Table 4 clearly shows that the choice of VTDs, or portions of VTD's, included in the New District 12 are more consistent with the General Assembly's goal of including more strong Democratic VTDs in New District 12 than was the case for the Democrats' 2001

redistricting scheme. The final column in the Table 4 shows the 2008 Obama vote percentages in the three areas described in Paragraph 48. It also summarizes the difference in the BTVAP percentages for the areas added to the New District minus the areas removed. In the areas common to both the New and Old Districts, President Obama received 79.92% of the vote. In the areas included in only the New District President Obama received 75.39% of the vote, which is generally consistent with the rest of the district. On the other hand, the areas that were included only in the Old 12th District, voted for President Obama at a rate of 53.01%. Clearly, if the principle political goal of the New Plan was to place those VTDs which had the highest Obama vote percentage (the measure of Democratic performance used in drafting the New Plan) into the New 12th District, the New District 12 does a far better job of accomplishing this goal than the prior redistricting scheme, or any of the alternative Democratic maps presented to the General Assembly in 2011. The only political decision which one can perceive by the desire to place lower Democratic VTDs into the New 12th District is an attempt to submerge Republican voters in a safe Democrat seat and weakening the surrounding Republican districts.

63. The other thing that Table 4 demonstrates is that, as a result of the difference between the areas taken out in and out of New District 12, .there was an increase of 20.47% in term of TBVAP and an increase of 22.38% in terms of the 2008 vote for President Obama. This clearly results in a greater political effect than a racial effect.

64. North Carolina's 12th Congressional District was perceived by all as being a "political" rather than

a "racially based" going into the current redistricting cycle. That perception governed its construction throughout the line-drawing process. The fact that highest performing Democrat VTDs have the highest percentage of African-Americans, does not preclude those precincts being moved into any new district for strictly political purposes.

65. The U. S. Supreme Court made it clear in *Cromartie II* at 258„ that just because the strongest Democratic precincts, in terms of percentage of voting behavior, happened to be the highest in percentage of adult African-Americans, the General Assembly would not be precluded from adding them to a strong Democratic district. justice Breyer stated that "the party attacking the legislatively drawn boundaries must show at the least that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles." Certainly the Republicans political objectives in 2011 were just as legitimate as the Democrats' objectives in 2001. They were just governed by a desire to achieve the opposite political results

66. The Democrats, in their drafting of the 2001 map, fractured the African-American community in Guilford County to accomplish their political goal of creating a strong Democrat District 13. The General Assembly, in 2011, reunited that community and placed it in the New District 12 to accomplish its political goal of creating a more Republican District 6. The General Assembly also placed more heavily Democrat VTDs in Mecklenburg to accomplish its goal of creating increased Republican strength in Districts 9 and 8.

67. For all the reasons stated above, including the fact that Dr. Ansolabehere's analysis was not a holistic analysis of the Old and New Plans as a whole, or even considering all the factors influencing the construction of the New Districts 1 and 12, it is my expert opinion that Dr. Ansolabehere's report does not support his assertion that race was the predominant factor in the construction Congressional Districts 1 and 12 in the Rucho-Lewis 3 Congressional Plan.

68. The General Assembly's overarching goal in 2011 was to create as many safe and competitive districts for Republican incumbents or potential candidates as possible, and to unravel what the Republicans believed to have been succession of Democrat gerrymanders in previous decades.

69. The second goal was to adhere to the one-person, one vote rule by creating districts as equal in population as practicable; a point not at issue in this case.

70. The third goal was to ensure, to the extent possible, that the New Plan would both be precleared by United States Department of Justice under the provisions of Section 5 of the Voting Rights Act (VRA); and subsequently survive legal challenges under the provisions of the 14th Amendment of the U. S. Constitution and Section 2 of the VRA.

71. A fourth goal was to create a New 1st District which would not end up with a severe underpopulation at the end of this decade, as was the case for the previous 1st Congressional District. In terms of 2010 Decennial Census Data, the previous District 1 was underpopulated by 97,563 persons, while the previous District 12 was overpopulated by 2,847.

72. For all these reasons, it is my expert opinion that Dr. Ansolabehere's analyses are not sufficient to prove that race was the predominant factor in the creation of the Rucho-Lewis Congressional 3 Plan.

DATED on January 17, 2014.

/s/Thomas B. Hofeller
Thomas B. Hofeller, Ph.D.

MAP 1

Comparison of 2001 and 2011 - 12th Congressional District

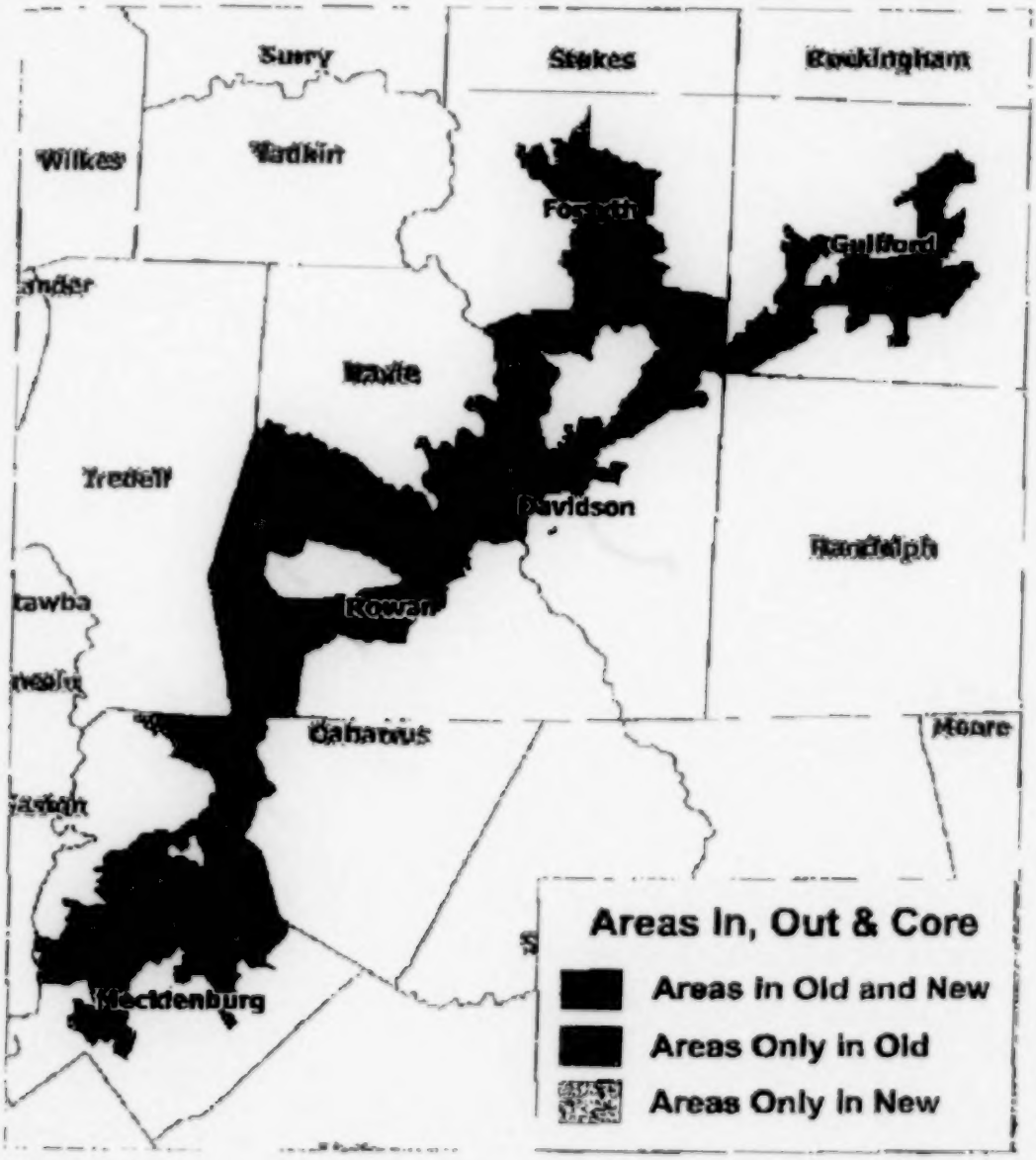


TABLE 1

COMPARISON OF CITY AND TOWN SPLITS IN DISTRICT 1 - 2001 PLAN VERSUS 2011 PLAN

CITY OR TOWN SPLITS IN 2011 PLAN			
City or Town	County	Districts	Note
Walstonburg	Greene	1, 3	
Butner	Granville	1, 13	
Dorchers	Nash	1, 13	
Durham	Durham	1, 4, 5 & 13	
Edenton	Chowan	1, 3	Zero Persons in non-contiguous part
Elizabeth City	Pasquotank	1, 3	
Goldsboro	Wayne	1, 13	
Greenville	Pitt	1, 3	
Grimesland	Pitt	1, 3	4 Persons in non-contiguous part
Hertford	Perquimans	1, 3	8 Person located in another VTD
Kinston	Lenior	1, 7	
Mount Olive	Wayne	1, 13	
New Bern	Craven	1, 3	
Plymouth	Washington	1, 3	
Red Oak	Nash	1, 13	
Rocky Mount	Edgecombe Nash	1, 13	
Snow Hill	Greene	1, 3	
Tarboro	Edgecombe	1, 13	
Washington	Beaufort	1, 3	
Wilson	Wilson	1, 13	
Winterville	Pitt	1, 3	

CITY OR TOWN SPLITS IN 2001 PLAN		
City or Town	County	Districts
Ayden	Pitt	1, 3
Dorchers	Nash	1, 13
Farmville	Pitt	1, 3
Goldsboro	Wayne	1, 3
Greenville	Pitt	1, 3
Havelock	Craven	1, 3
Henderson	Vance	1, 2
Kinston	Lenior	1, 7
Nashville	Nash	1, 2
New Bern	Craven	1, 3
Oxford	Granville	1, 13
Rocky Mount	Edgecombe Nash	1, 13
Sharpsburg	Wilson, Nash	1, 3
Washington	Beaufort	1, 3
Whitaker	Nash, Edgecombe	1, 2
Wilson	Wilson	1, 3

TABLE 2

COMPARISON OF CITY AND TOWN SPLITS IN DISTRICT 12 - 2001 PLAN VERSUS 2011 PLAN

CITY OR TOWN SPLITS IN 2011 PLAN			
City or Town	County	Districts	Note
Charlotte	Mecklenburg	8, 9, 12	
Concord	Cabarrus	8, 12	
East Spencer	Rowan	1, 13	
Greensboro	Guilford	6, 12	
High Point	Guilford, Davidson,	2, 5, 6, 12	
Jamestown	Guildord	6, 12	
Kannapolis	Cabarrus	8, 12	
Landis	Davidson	8, 12	
Lexington	Davidson	8, 12	
Salisbury	Rowan	5, 8, 12	
Thomasville	Davidson	8, 12	
Wallburg	Davicson	5, 12	
Winston-Salem	Forsyth	5, 12	

CITY OR TOWN SPLITS IN 2001 PLAN		
City or Town	County	Districts
Charlotte	Mecklenburg	8, 9, 12
Concord	Cabarrus	8, 12
Davidson	Mecklenburg	9, 12
		1, 13
Greensboro	Guilford	6, 12, 13
High Point	Guilford, Davidson,	6, 12
Jamestown	Guildord	6, 12
Kannapolis	Cabarrus	8, 12
Landis	Davidson	8, 12
Lexington	Davidson	8, 12
Midway	Davidson	6, 12
Salisbury	Rowan	6, 12
Spencer	Rowan	6, 12
Thomasville	Davidson	6, 12
Walkertown	Forsyth	5, 12
Welcome	Davidson	6, 12
Winston-Salem	Forsyth	5, 12

TABLE 3

SUMMARY OF PLAINTIFFS EXPERTS' TABLES 5 THROUGH 8

Old and New Congressional Districts 1 and 12

For County Envelopes Containing Both the Old and New Versions of Each District

Congressional District 1							
Old Map				New Map			
Party of Registration	Group	% of Group in Old CD 1	% Blk - % Wht	Party of Registration	Group	% of Group in New CD 1	% Blk - % Wht
Democrat	White	39.6	18.7	Democrat	White	41.5	30.6
	Black	58.3			Black	72.1	
Republican	White	31.0	34.5	Republican	White	29.9	39.3
	Black	65.5			Black	69.2	
Undeclared	White	33.2	18.2	Undeclared	White	34.7	33.5
	Black	51.4			Black	68.2	

Congressional District 12							
Old Map				New Map			
Party of Registration	Group	% of Group in Old CD 12	% Blk - % Wht	Party of Registration	Group	% of Group in New CD 12	% Blk - % Wht
Democrat	White	40.4	16.8	Democrat	White	18.3	46.7
	Black	57.2			Black	65.0	
Republican	White	19.8	32.7	Republican	White	13.8	46.1
	Black	52.5			Black	59.9	
Undeclared	White	21.2	29.2	Undeclared	White	17.4	42.3
	Black	50.4			Black	59.7	

Source: Ansolabehere Expert Report - December 23, 2013 - Charts 5 through 8

TABLE 4

STATE OF NORTH CAROLINA

RACIAL COMPARISON OF 12TH CONGRESSIONAL DISTRICT

2011 ENACTED 12TH DISTRICT COMPARED TO 2001 ENACTED 12TH DISTRICT

SHOWING AREAS COMMON TO BOTH, REMOVED FROM 2011 DISTRICT AND PORTIONS ADDED TO 2011 DISTRICT

Area Examined	2010 Census Data				2008 General Election Data			
	TPOP	18+ TPOP	18+ TBLK	% 18+ TBLK	Total Obama plus McCain	Total Obama	Total McCain	% Obama
Area in New and Old 12th	494,530	368,016	199,534	54.22%	200,925	160,587	40,338	79.92%
Area Only in Old 12th	242,909	183,019	41,671	22.77%	103,956	55,112	48,844	53.01%
Area Only in New 12th	238,988	176,434	76,282	43.24%	90,279	68,063	22,216	75.39%
Percent Added Areas Minus Pct. Removed Areas				20.47%				22.38%

Population Shift between Old and New 12th Congressional District by County

County	New		Old		New-Old
Guilford	196,003		146,329		49,674
Forsyth	52,262		143,216		-90,954
Davidson	40,869		82,795		-41,926
Rowan	42,641		61,242		-18,601
Cabarrus	19,345		19,345		0
Mecklenburg	382,379		283,419		98,960
Total	733,499		736,346		-2,847
Corridor Total	102,855		163,382		-60,527

REPORT OF STEPHEN ANSOLABEHERE IN RESPONSE TO THOMAS B. HOFELLER

I. Statement of Inquiry

1. I have been asked to evaluate the rebuttal report issued by Dr. Thomas B. Hofeller in this case.

II. Background and Qualifications

2. My background and qualifications are discussed in my initial report, signed December 23, 2013.

III. Sources

3. I relied on data and tables available through the North Carolina General Assembly website: http://www.ncleg.net/representation/redistricting.aspx.

IV. Findings

A. Geographic Characteristics of CDs 1 and 12

4. Dr. Hofeller states that the reduction in compactness in CDs 1 and 12 is not substantial. Specifically, he states that a reduction of the Reock score from .116 to .071 in CD 12 and from .394 to .296 in CD 1 is small compared with the difference between those districts' scores and the Reock score of the ideal square district (.637) or ideal circular district (1.00). (Paragraphs 35-38 of his report.)

5. This observation underscores the fact that CD 12 was highly non-compact in the 2001-2011 map, and the new map, rather than improving on the district's compactness, only made it worse. Dr. Hofeller concedes that "both versions of the 12th District have miserable scores." (Paragraph 37) A Reock score can never go above 1 or below 0. It is the ratio of the area of a given district to the area of the most compact district of the same length (i.e., the inscribing circle). The lower the Reock score the smaller the area covered

by the district relative to the most compact district of the same length. The smaller area actually covered for a given length, the less compact the district is. Or to put it another way, comparing two districts of the same area, the district that has a longer perimeter to encompass that area is less compact. Previous CD 12, the least compact district in the 2001 to 2011 map, had a very low Reock score of .116. The Reock of new CD 12 is even closer to the lower bound of 0.

6. New CD 1 has a Reock compactness score that is 37 percent lower than the Reock score of previous CD 1. That is, the new version of CD 1 reduced by 37 percent the area covered by CD 1 relative to the smallest inscribing circle around the district. New CD 12 has a Reock compactness score that is 25 percent lower than that of Previous CD 12. These are noticeable reductions in the area of these districts, relative to the ideal district of the same length (i.e., the smallest inscribing circle).

7. Dr. Hofeller does not discuss the alternative measure of compactness offered in my report, which is the ratio of the area of a district to its perimeter. See Table 1 in my original report. The Area to Perimeter measure offers a somewhat different score of compactness. Comparing two districts of the same area, the district that has a longer perimeter to encompass that area is less compact. Or alternatively, the district that covers less area per mile of perimeter is less compact.

8. The new version of CD 1 has a ratio of Area to Perimeter of 6896, compared with 11098 in the previous version. In other words, each mile of perimeter in new CD 1 incorporates or encompasses 6,896 miles of land area. By comparison, each mile of perimeter in Previous CD 1 incorporates or

encompasses 11,098 miles of land area. That is a 38% reduction in the compactness as measured by the Area to Perimeter metric (i.e., (11098-6898)/11098). This is the second largest reduction in the ratio of area to perimeter in the map.

9. The new version of CD 12 has a ratio of Area to Perimeter of 1839, compared with 2404 in the old version. In other words, each mile of perimeter in new CD 12 incorporates or encompasses 1,839 miles of land area. By comparison, each mile of perimeter in old CD 12 incorporates or encompasses 2,404 miles of land area. That is a 24% reduction in the compactness as measured by the Area to Perimeter metric (i.e., (2404-1839)/2404). CD 12 already had, by far, the lowest ratio of Area to Perimeter, and it has the fifth largest reduction in this compactness measure in the map.

10. Dr. Hofeller points out that four other districts are highly non-compact according to the Reock measure. These are new CDs 4, 6, 9, and 11. (Paragraph 38) New CDs 4, 6, and 9 border new CDs 1 and 12 and are likely affected by the non-compact configurations of CDs 1 and 12. New CD 11 covers most of western North Carolina, and much of its shape is defined (and constrained) by the border of the state.

11. Both Reock and Area to Perimeter scores reveal that the map reduced the compactness of CDs 1 and 12 substantially, and CD 12 was already highly non-compact. Compactness is a traditional redistricting principle. Neither new CD 1 nor new CD 12 were constructed to improve their compactness.

B. Obama Vote. Black Registration. and Black VAP

12. Dr. Hoffeler states that the vote for Obama in 2008 was used as the main indicator in drawing district boundaries. He suggests that the Obama vote

in 2008 was used to achieve partisan purposes, but offers no supporting evidence that these data had primarily partisan and not racial effects. (Paragraphs 36-39, 59-64)

13. What was the effect of using the Obama 2008 vote as an indicator to draw CD 1 and CD 12 in North Carolina? It is problematic and unusual to choose a single election with a Black candidate as an indicator of partisan performance. The reason that one wants to avoid using only one election in which one of the candidates is Black candidate in order to determine the partisanship of the vote is that it is difficult to infer whether the vote for that candidate was based on race or party. The relevant question is what is the effect of one of these factors (race or party) controlling for the other on the likelihood that an individual voter was included in either CD 1 or CD 12.

14. My initial report revealed that the effect of race controlling for party was substantial and much larger than the effect of party given race on the likelihood that an individual was included in CDs 1 or 12.

15. Further analysis of VTD level data reveals that the Obama vote is very highly correlated with Black Registration, and that analysis of Census data would have masked that association. Dr. Hofeller notes that the increase in TBVAP in CD 12 is nearly identical to the increase in 2008 vote for Obama (see his paragraph 63).

16. Table 1 presents the correlations between percent Black VAP or percent White VAP and percent vote for Obama in 2008. Statewide, the correlation between Black VAP and Obama vote is .60. Obama vote is correlated with Census racial data, but the correlation is not very high.

17. Table 1 also presents the correlations between percent Black Registration or percent White Registration and percent vote for Obama in 2008. Statewide, the correlation between Black VAP and Obama vote is very high, .80.

18. In this particular circumstance, then, registration data reflecting race are a stronger correlate with Obama 2008 Vote than are Census data. Specifically, Black and White percent of voting age population in Census data are more weakly correlated with Obama vote than are Black and White Percent of Registered Voters in the State of North Carolina. If one were to look only at the association between Census data and Obama vote in North Carolina, then the effect on Black registered voters of using the Obama vote as an indicator in districting would be obscured.

19. The correlations between Black (or White) Registration and the Obama vote are particularly high in CDs 1 and 12. I further divided the VTDs in the state into those VTDs that are or were in new or previous CD 1, new or previous CD 12, and all other VTDs. The correlations between Black (or White) Registration and the Obama vote are .82 (or -.87 for Whites) in CD 1 and .92 (or -.93 for Whites) in CD 12. These are extremely high correlations. In the VTDs in CD 12, the correlation between the Obama vote and Black Registration is approaching 1. The Obama vote, then, is an extremely strong positive indicator of the location of Black registered voters in the areas around CDs 1 and 12. It is extremely strong negative indicator of the location of White registered voters in the areas around CDs 1 and 12.

20. Thus, Dr. Hofeller's statement that he only used the Obama vote to draw congressional districts does

not undermine the conclusion that race predominated over party as a factor in drawing CDs 1 and 12. Whatever indicator or indicators were used by the map drawers, the measures had the effect of making Black registered voters of each partisan group much more likely to be included in CDs 1 and 12 than White registered voters of the same partisan group. And those indicators had relatively little effect on making Democratic registered voters of each racial group more likely to be included in a district than Republican registered voters of that same racial group.

C. Methodology for assessing racial and partisan patterns

21. A central question is whether race or party was the predominant factor in explaining or predicting which voters were included in CDs 1 or 12. In order to make this determination, one wants to gauge the effect of race controlling for party and party controlling for race. Otherwise, the vote for a candidate who is, say, a Democrat and Black may be interpreted as either an indicator of Democratic vote or of Black vote.

22. The methodology that I employed addresses that question in three steps. First, I ascertained the extent to which race of the registrant predicts the likelihood of being included in CD 1 or CD 12, holding constant the party of the registrant. The effect of race given party equals the difference between the likelihood that a Black voter of a given party is included in a district and the likelihood that a White voter of that same party is included in that district. Second, I ascertained the extent to which party of the registrant predicts the likelihood of being included in CD 1 or CD 12, holding constant the race of the registrant. The effect of party given race equals the difference between the likelihood that a Democrat of a

given race is included in a district and the likelihood that a Republican of that same race is included in that district. Third, I compared the effect of race given party with the effect of party given race. I examined the relationship between race and party on the likelihood that different types of registered voters are included in CD 1 or CD 12. This approach is suggested elsewhere in the literature on racial voting, such as Gary King, *A Solution to the Ecological Inference Problem: Reconstructing Individual Behavior from Aggregate Data*, Princeton University Press: Princeton, NJ, 1997, pages 12-14 generally and Chapter 10, on registration specifically. Dr. Hofeller is critical of this approach (e.g., paragraphs 27, 33, and 52).

1. General Criticisms

23. Dr. Hofeller states (paragraph 27) that the analysis offered shows nothing more than that there is higher Black Voting Age Population in the areas moved into CDs 1 and 12 than then areas moved out. In fact, my analysis goes further than that, as it estimates the effect of race controlling for party and party controlling for race. The simple Census data only state whether there are more Blacks or more Whites in CD1 or CD12, not whether the increase in Black popu'ation was due to an increase in Democrats who happened to be Black or an increase in Blacks across all party groups. My analysis showed that it was the latter.

24. Dr. Hofeller suggests that a better approach would be to look at the relationship between Census demographic data and the vote for Obama in 2008. (Paragraph 55) He never states what sort of analysis exactly is to be performed or how those data could be used to separate the effects of race and party in

estimating the likelihood of inclusion in CD 1 or CD 12.

25. He offers no such analysis of the VTD-level data. He offers no assessment of the likelihood that a Black or White voter of a given party was included in CDs 1 or 12. He offers no assessment of the likelihood that a Democrat or Republican of a given race was included in CDs 1 or 12.

2. Use of Registration Data

26. Dr. Hofeller questions the use of registration data to perform this analysis, rather than election results. (paragraphs 33 and 55)

27. The unique advantage of registration data in this particular circumstance is that it allows us to measure separately the effect of party given race and the effect of race given party on the likelihood that an individual is included in CD 1 or CD 12. North Carolina is one of a handful of states that lists race and party on the voter registration lists. By counting the numbers of White and Black Democrats, White and Black Republicans, and White and Black Unaffiliated registrations we can estimate the effect of race given party and party given race. Those estimates were offered in my initial report. (See Tables 9 and 10 in that report)

28. The individual level data allow analysis of the question at hand without resorting to ecological regression, ecological inference or other more complicated methods.[1]My original analysis estimated

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[1] See Gary King, *A Solution to the Ecological Inference Problem: Reconstructing Individual Behavior from Aggregate Data*, Princeton University Press: Princeton, NJ, 1997, especially Chapters 1 and 10.

the effect of race controlling for party and of party controlling for race using data on individual registered voters in the State of North Carolina and in the areas of the districts in question.

29. Dr. Hofeller offers no alternative methodology or analyses using aggregate Census and election data, such as at the level of the VTD, to address this matter.

30. Dr. Hofeller suggests, but offers no evidence, that registration is not tightly related to election results. (Hofeller, paragraph 33)

31. Registration is highly correlated with actual election results in the State of North Carolina. The correlation between Democratic share of party Registration and the Obama Vote is .78. The correlations were even higher with respect to the other statewide elections in 2008. The correlation between Democratic share of party Registration and the Democratic share of vote for Governor in 2008 is .90, and the correlation Democratic share of party Registration and the Democratic share of vote for United States Senate in 2008 is .83.[2] These correlations reveal that registration is in fact a strong predictor of electorate choice in the State of North Carolina. It is further worth noting that the Obama vote in 2008 has the weakest correlation with party registration of the three statewide elections that year, suggesting that it may have been the least useful of the three elections to use as a pure indicator of party. And, the correlation between Black registration and the Obama vote is slightly stronger (.80) than the correlation between Democratic registration and Obama vote (.78).

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[2] Correlations are weighted correlations, and VTDs are weighted by the total number of presidential ballots in 2008.

32. Party registration is itself an electoral choice in the State of North Carolina. Party registration in the State of North Carolina restricts in which party's primary a person can vote.

33. As demonstrated in Table 1, Black Registration, not Black VAP, is a much stronger correlate of the Obama vote. Given Dr. Hofeller's claim that the Obama vote is the relevant indicator, the strength of correlation of Black Registration suggests that the analysis of registration is highly informative of voting behavior, and more indicative of the electoral effects on Black voters than would be an analysis of the association of Obama vote with Black VAP. Hence, I conclude that analysis of registration data is highly relevant to understanding the effects of the new CDs 1 and 12 on Black voters. And, the analysis in my original report revealed that race controlling for party is a much stronger indicator of inclusion in those CDs than is party controlling for race.

3. Areas of Analysis

34. I offer two separate analyses of the target areas or populations for the location of CDs 1 and 12. One such analysis examines all registered voters in the counties in which the CDs are located - called the envelope of counties. The other analysis examines sets of VTDs that were in either new CD 1 or previous CD 1 (or new CD 12 or previous CD 12).

35. Dr. Hofeller questions my use of the counties in which CDs are located and states that such a choice is highly unusual. (paragraph 52)

36. Analysis of racial voting patterns at the county level and of the counties in which a district is situated is quite common in voting rights cases. The wide use of counties in performing ecological regressions

informed my decision to use counties as a target area. Other expert reports in cases concerning the 2011 North Carolina redistricting, including a report filed by Defendants' expert in the state court case, also examine county-level racial voting data to assess the likely effects of the districts. See the reports of Thomas Brunell, "Report on Racially Polarized Voting in North Carolina," June 14, 2011. 11 CVS 16896, 11 CVS 16940, and Ray Block, Jr., "Polarized Voting in 2006, 2008, and 2010 in North Carolina State Legislative Contests," Case 1:13-cv-00949-WO-JEP. Filed 1/17/14.

37. Crossing of county lines is sometimes used as an indicator of respect for natural or other political geographies in the process of drawing lines. Hence, counties are sometimes treated as a relevant unit of analysis in understanding the locus of districts.

38. Other researchers have used VTDs in and neighboring a district as the target areas for the analysis of the racial effects of a districting plan. See the report of Gary King and Benjamin Schneer to the Arizona Independent Redistricting Commission; Gary King and Benjamin Schneer, "Analysis of the Arizona Independent Redistricting Commission Congressional Map" http://gking-projects.iq.harvard.edu/AZ-DOVaz_report cd.pdf.

D. District Population Growth

39. Dr. Hofeller states that, in addition to partisanship and preclearance, an important policy goal of the legislature was guarding against the underpopulation of CD 1 in the future. (Paragraph 71.)

40. Dr. Hofeller states that CD 1 was moved away from slow growing rural counties and into urban areas in order to create a district that would likely retain its population over the coming decade. He discusses the

rural counties in his rebuttal report. (Paragraphs 20 and 51) However, he does not state what data or population forecasts were used for the district in 2020. He does not state the process for deciding which urban areas (especially which VTDs) to *include* in CD 1.

41. To assess the claim that the areas added to CD 1 were included primarily to counteract population declines, and were not racially motivated, I examined the changes to CD 1 in the City of Durham and County of Durham. CD 1 in the 2001¬2011 map did not include any part of the City or County of Durham. New CD 1 includes 159,691 persons from this county, which accounts for 21.8% of the population of the New CD 1.

42. Population growth data for the VTDs are not available in the North Carolina State Legislature's Redistricting website. Population and registration counts by race, however, are available at that website. I analyzed those data to see if the Voting Age Population and registered voters in the portions of the City and County of Durham that were included in CD 1 were disproportionately Black.

43. Table 2 presents the racial composition of the City of Durham and the County of Durham and the racial composition of the portions of these jurisdictions that were added to CD 1. Each cell presents the number of persons in that category. In the City of Durham, for example, 69,454 persons of Voting Age are Black alone, and the VTDs in the City of Durham that were included in CD 1 contain 55,265 persons who are Black alone.

44. Comparison of the percent of Blacks and percent of Whites who were included in CD 1 from the City of Durham and the County of Durham reveals that Blacks in these jurisdictions were

disproportionately likely to be added to CD 1. The majority of Whites in these jurisdictions were included in other CDs.

45. Using the data in Table 2, one can calculate the percent of a given group in the City or County of Durham that was included in CD 1. For example 79.6 percent (55,265/69,454) of all people in the City of Durham who considered themselves to be Black (and no other race) were included in CD 1. Similar calculations can be made for each racial group and for Voting Age Population and Registered Voters.

46. In the City of Durham, 79.6 percent of the Black Voting Age Population was included in CD 1. 48.4 percent of the White Voting Age Population was included in CD 1.

47. In the City of Durham, 80.5 percent of Black Registered Voters were included in CD 1. 44.2 percent of White Registered Voters were included in CD 1.

48. In the County of Durham, 77.6 percent of the Black Voting Age Population was included in CD 1. 43.3 percent of the White Voting Age Population was included in CD 1.

49. In the County of Durham, 78.5 percent of Black Registered Voters were included in CD 1. 38.9 percent of White Registered Voters that were included in CD 1.

50. The boundary of CD 1 in the City and County of Durham was disproportionately more likely to incorporate Blacks than Whites. Black registered voters in the County of Durham were twice as likely as Whites to be included in CD 1.

E. Population Equality

51. Dr. Hofeller states that equalizing population was one of the four major policy objectives of the State Legislature in the construction of new CDs 1 and 12. This is a legal requirement under the United States Constitution as interpreted by the Supreme Court of the United States.

52. In the case of CD 12, this requirement did not appear to exert much of a constraint on the extent to which the State Legislature shifted populations among districts in the process of drawing the Rucho-Lewis map.

53. Previous CD 12 needed few changes in order to equalize population. According to the 2010 Census enumeration statistics provided by the North Carolina Legislative Redistricting site, the district had only 2,847 more persons than the idea district of 733,500. In other words, prior to redistricting, CD 12 needed to have only 2,847 people removed from the district in order to achieve the equal population objective.

54. The Rucho-Lews map, however, added 239,064 people to CD 12 and removed 241,911 people from CD 12. And, the populations added to new CD 12 were disproportionately Black compared with the areas removed from previous CD 12. Of the 239,064 people added to CD 12, 105,132 people (44%) were Black. Of the 241,911 people removed from CD 12, 56,046 people (23%) were Black. In other words, the changes in CD 12 from the 2001-2011 map to the Rucho-Lewis map increased the number of Black persons in CD 12 by 49,086 (i.e., 105,132 minus 56,046). The change in the Black population far surpasses the changes in the district needed to maintain equal population.

Table 1. Correlation Between Obama Share of Two Party Vote and Racial Composition of VAP and Registered Voters in VTDs

	Entire State	CD 1	CD12	Districts Other than CD 1 and CD 12
Black VAP	+.60	+.47	+.65	+.46
White VAP	-.64	-.54	-.69	-.50
Black R.V.	+.80	+.82	+.92	+.69
White R.V.	-.81	-.87	-.93	-.69

Table 2. Racial Composition of Areas in City and County of Durham

City of Durham

	Voting Age Population		Registered Voters	
	All Areas	In CD 1	All Areas	In CD 1
Black Alone	69,454	55,265	62,768	50,570
White Alone	80,598	39,010	75,664	33,442
Total	176,435	111,769	152,297	92,492

County of Durham

	Voting Age Population		Registered Voters	
	All Areas	In CD 1	All Areas	In CD 1
Black Alone	75,440	58,560	69,542	54,610
White Alone	103,053	44,624	94,725	36,867
Total	207,266	121,895	179,309	100,189

/s/ Stephen Ansolabehere

Stephen Ansolabehere

January 29, 2014

Cambridge, Massachusetts

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF NORTH CAROLINA
DURHAM DIVISION

CIVIL ACTION NO. 1:13-CV-00949

DAVID HARRIS; CHRISTINE BOWSER;
and SAMUEL LOVE,

Plaintiffs,

v.

PATRICK MCCRORY, in his capacity as Governor of North Carolina, NORTH CAROLINA STATE BOARD OF ELECTIONS, and JOSHUA HOWARD, in his capacity as Chairman of the North Carolina State Board of Elections,

Defendants.

STATE OF NORTH CAROLINA
County of Wake

Thomas Brooks Hofeller declares the following:

1. I have previously provided one expert report in this case, which was signed by me on February 17, 2014. I hereby incorporate my First Expert Report by reference.

2. The full range of my professional qualifications and experience is included in my recently updated resume, which is attached as Appendix 1.

3. In my previous report, I evaluated the Expert Report submitted by Dr. Stephen Ansolabehere on

behalf of the Plaintiffs in this case. I have been asked by Defendants to further analyze the genesis of the current congressional districts for North Carolina, known as the "Rucho-Lewis Congress 3" plan, enacted as Sessions Law 2011-403 on July 2e, 2011 (2011 Plan) with particular emphasis on the 2011 12th District. This set of congressional districts has been used in the 2012 and 2014 Primary and General elections. In making my analysis, I have also examined the two previous congressional district plans know as "97 House-Senate Plan A", enacted in 1997, used for 2000 election only (1997 Plan) and the "Congress Zero Deviation" plan, enacted in 2001, used for the 2002 through 2010 Primary and General elections (2001 Plan).

4. Information about these plans, including census block assignment files and geographic shape files, may be found on the North Carolina General Assembly website at http://www.ncleg.net/representation /redistricting.aspx . Census Data used comes from the United States Bureau of the Census' 2010 Redistricting Data File and the 2010 Decennial Census TIGER File, both released following the 2010 Decennial Census. The data I used for political election analysis was also obtained from the North Carolina General Assembly's Information Systems Division.

5. This information has been incorporated into a geographic information system called "Maptitude for Redistricting", a product which is offered by Caliper Corporation, based in Newton, Massachusetts. The maps included in this report have all been produced using Maptitude, and tables were produced using census and election data extracted from Maptitude and reformatted using Microsoft Excel.

6. Dr Ansolabehere's analysis of 2011 Congressional Districts 1 and 12 is insufficient because he analyzes these two districts as if the other 11 districts were drawn almost as an afterthought. Drafting every district in the plan required a series of decisions necessary to balance population requirements, partisan political goals, incumbent issues, and Voting Rights Act requirements. Each district was not constructed in a vacuum, and the plan cannot be comprehensively analyzed without determining the interplay of all these factors. This is particularly true in the case of District 12, which is the primary focus of this report.

7. As a result of population growth between the 2000 and 2010 Decennial Censuses, North Carolina's 13 congressional districts were significantly malapportioned in terms of 2010 Decennial Census populations. Districts ranged in population from a deficiency of 97,583 persons (District 1) to a surplus of 118,878 persons (District 9). The three most western districts in the State (Districts 5, 10 and 11) had a combined population deficiency of 114,009 persons, which was difficult to resolve because of the location of the 12th District. It was also notable that District 4 had a population surplus of 93,379 (See Map 1 showing the 2010 population deviations for the 2001 districts).

8. These shifts in relative population between North Carolina's 2001 districts, even in the absence of all other considerations, would require significant changes in the 2011 Plan district boundaries. As a result of the 2010 General Elections, majorities in both chambers of the General Assembly switched from Democrat to Republican control. The majority party had different political goals than the Democrats,

which is clearly evident from an thorough examination of the 2001 and 2011 Plans and the results of the 2012 and 2014 General Congressional Elections.

9. The Republicans' primary goal was to create as many districts as possible in which GOP candidates would be able to successfully compete for office. As a result of the 2010 General Elections, Democrats were elected in 7 districts (1, 4, 7, 8, 11, 12 and 13), while Republicans were elected in 6 districts (2, 3, 5, 6, 9 and 10). Following the 2014 General Election, Democrats were elected in only 3 districts (1, 4 and 12). Republicans were elected in the 10 remaining districts.

10. The Republican strategy was to weaken Democratic strength in Districts 7, 8, and 11; and to completely revamp District 13, converting it into a competitive GOP district. At the same time, 2 GOP-held districts (Districts 2 and 9) needed marginal improvement in GOP voting strength (See Map 2 showing the 2008 General Election vote percentage for President Obama for all 13 2001 districts). This policy goal was attained by concentrating Democratic voting strength in Districts 1, 4 and 12 (See Map 3 showing the 2008 General Election vote percentage for President Obama for all 13 2011 districts).

11. Maps 4, 5 and 6 show the 1997, 2001 and 2011 congressional districts consecutively for the central portion of the State. When the 1997 map was drawn, North Carolina was entitled to only 12 congressional districts. As a result of the 2000 General Election (the only election in which the 1997 Plan was used), the newly drawn 12th District was completely surrounded by GOP-held Districts 5, 6, 8, 9 and 10 (See Map 4).

12. The Democrats, who controlled the line-drawing process in 2001, rotated District 5, 6 9 and 10 counter-clockwise around District 12 to create room for the new 13th District, which was drawn as a strong Democrat district for Brad Miller, who served as Chairman of the State Senate Redistricting Committee in 2001 (Miller was elected in the new 2001 13th District from 2002 through 2010). The 2001 13th District ran from the strong Democratic portions of Wake County (Raleigh), through Granville, Person, Caswell, and Rockingham Counties ending up in the strong Democratic areas of Guilford County (Greensboro), which were removed from the northern end of District 12. On the way, the new District 13 dipped down into Alamance County to incorporate strong Democratic areas in Burlington. In essence, District 13 was constructed in similar manner to District 12, connecting strong Democratic sections of three metropolitan areas (Raleigh, Burlington and Greensboro) through a less populous corridor along the northern border of the State with Virginia (See Map 7).

13. Map 8 shows how 2001 District 13 was divided among the new congressional districts in the 2011 Plan. In 2011 many of the strong Democrat VTDs in Greensboro were returned back to the new 2011 12th District, in which they were located in the 1997 Plan (the red-colored area). Also, the strong Democrat VTDs in both Burlington and Raleigh were incorporated into the new District 4 (the green-colored area). The remaining VTDs of Raleigh, along with southern Granville County were made part of a new District 13 (the yellow-colored area). A portion of Granville County was placed in new District 1 to connect the eastern portion of 2011 District 1 to Durham (the orange-colored area).

14. In essence, to create the new 2011 Plan, the 2001 13th District was rotated clockwise around Raleigh, the 2001 2nd District was rotated the same direction into Moore and Randolph Counties (See Maps 4 and 5 to follow this discussion.). Then the 2001 6th District was moved north into Rockingham, Caswell and Person Counties along with the northern portions of Granville, Durham and Orange Counties, thus occupying the area vacated by the eastward movement of the old 2001 13th District. Once again, this is why a thorough examination of the entire new 2011 Plan, in relation to the old 2001 Plan, is essential to gain a true understanding of the placement of the three new Democrat districts (1, 4 and 12).

15. The history of the configuration of the 13th District is important because a major portion of 1997 District 12 in Guilford County (Greensboro) was moved to District 13 as it was being constructed for the first time in 2001. Much of that same area was returned back to District 12 as it was redrawn in 2011. This will be discussed in some detail below.

16. After the Shaw and Cromartie litigation, North Carolina was finally able to gain federal court approval of 12th District configuration (the 1997 Plan which was only used in 2000 elections). Since passage of the 1997 Plan, the 12th District has generally remained in the same location in the State. The 12th District has been anchored in Mecklenburg County (Charlotte) and connected to Guilford (Greensboro) and Forsyth (Winston-Salem) Counties through a narrow corridor of VTDs (precincts) running through Davidson, Rowan and either Iredell (1997) or Cabarrus (2001 and 2011) Counties.

17. The 12th District has also presented a geographic challenge to plan drafters in 2001 and 2011

because it almost bisects the State from north to south. In constructing the 2011 Plan the four congressional districts generally to the west of District 12 had to balance their populations by having some of them traverse through the gap between the northern end of District 12 and the northern border of North Carolina (using northern Forsyth County and Stokes County) or a 2-mile-or-less gap between the southern end of District 12 and the southern border of North Carolina in Mecklenburg County (See Maps 5 and 6).

18. The corridor connecting portions of the 12th District in Forsyth and Guilford Counties with Mecklenburg County, running through Cabarrus, Davidson and Rowan Counties was also shifted to the southeast, in the 2011 Plan adding 87,386 persons to 2011 District 5.

19. The placement of the borders of Districts 5, 8, 9 and 10 determined the configuration of District 12 in both the 2001 and 2011 Plans, just as the need to construct a Democrat 12th District running from Guilford/Forsyth to Mecklenburg shaped Districts 5, 8, 9 and 10.

20. Table 1 contains the populations of the 12th Congressional District located in each county in the last three enacted versions of the District. The populations are given in terms of 2010 Decennial Census total population.

21. The need to increase GOP voting strength in the 9th Congressional District in the 2011 Plan required the 9th to gain additional population in both Union and Iredell Counties, and be withdrawn entirely from Gaston County. At the same time, District 9 needed to be somewhat reconfigured in Mecklenburg County. Congressional District 8 was also substantially

withdrawn from Mecklenburg County, dropping its population in Mecklenburg County from 122,764 in the 2001 Plan to 17,572 in the 2011 Plan. This resulted, along with other substantial changes in the configuration of the 2011 8th District, in an increase in GOP voting strength in the 2011 8th District in comparison to the 2001 version if the District. The extra population available from reconfiguration of the 8th District in Mecklenburg County was then placed in the only other available district, which was the 2011 12th District. These changes can be seen on Maps 5 and 6.

22. In order to create the reconfigured 2011 6th District, Surrey and Stokes Counties, along with the portion of Rockingham County contained in the 2001 5th District, were moved into the 2011 6th District. But in order to create sufficient GOP strength in the 2011 6th District, the highly Democrat VTDs in Guilford County from the 2001 13th District were moved into the 2011 12th District adding an additional 49,674 persons to the portion of the 2011 12th District located in Guilford County (See Table 1).

23. To balance the 49,674 persons added to the 2011 District 12 in Guilford County, and the 98,960 persons added to 2011 12th District in Mecklenburg County (to improve the GOP voting strength in 2011 Districts 8 and 9), 90,954 persons were removed from the 2001 12th District in Forsyth County and placed in the 2011 5th District. Then 18,601 persons were removed from the 2001 12th District in Cabarrus, Davidson and Rowan Counties and also moved into the 2011 5th District. Only very heavily Democrat VTDs in Forsyth County were left in the 2011 12th District (See Table 1 for the population shifts).

24. The reason that a review of the shifts between districts in the 2001 Plan and the 2011 Plan is essential to an analysis of the 2011 12th District is that the boundaries of the present 12th Congressional District were determined by the requirements of one-person, one vote and political policy decisions. These shifts were not determined by race. Map 9 contains maps of the 1997, 2001, and 2011 versions of the 12th District. Map 10 shows the shifts in territory between the 2001 and 2011 12th Congressional Districts. Table 4 accompanies Map 10 and shows the populations of the areas shifted between the 2001 and 2011 versions of the 12th Congressional District.

25. In line with the *Cromartie* decisions of the United States Supreme Court, the GOP majority in the General Assembly treated the 12th Congressional District as a political district and not as a Voting Rights Act district. What has upset Plaintiffs is that the GOP's 2011 political goals vis-à-vis the redistricting of the 12th District, and the districts surrounding it, were diametrically opposite from those the Democrats would have acted upon if they were drafting the new congressional map in 2011.

26. Another factor that dispels Plaintiffs' contention that the 2011 12th District's configuration was primarily motivated by race is demonstrated by Table 3. This table indicates that, when compared to the 2001 12th District, the gain in Democrat election strength is greater than the gain in the percentage of adult total African-American population. The 2001 demographic makeup of the 12th District, measured in terms of the 2010 Decennial Census, is 43.77% 18+ Total Black Population, while the comparable figure for the 2011 12th District is S0.66%, an increase of 6.89%. The 2001 12th District,

measured in terms of the two-party vote in 2008 Presidential General Election was 70.75% for Obama, while the comparable figure for the 2011 12th District was 78.52%, an increase of 7.77%. This increase in the political vote was 0.88% higher than the gain in Adult Total Black population.

27. The political goal of the Republican-controlled General Assembly in drafting the 2011 Plan was to place as many areas of Democrat voting strength in the 2011 12th District as possible to increase the GOP voting strength in all the surrounding GOP-held districts. To the GOP majority, the configuration of the new 12th District was all about politics, not race.

28. Another issue covered by Plaintiffs' attorneys in my trial testimony in *Dickson, et al. v. Rucho*, et al on June 5, 2013 and also in my deposition in this case on May 6, 2014, was the configuration of the 2011 12th District in Guilford County. Map 11 contains outline maps of the 1997, 2001 and 2011 versions of the 12th District in Guilford County. Maps 12, 13, and 14 are detailed maps of the Guilford County Portion of the 12th District for each of these individual plans (1997, 2001 and 2011). Map 15 is a detailed map of 2001 District 13 in Guilford County. The configuration of the 2001 13th District is important because, as discussed in paragraph 13 above, the strong Democrat VTDs in the 2001 13th District were moved to the 12th District in the 2011 Plan.

29. The 2011 12th Congressional District in Guilford County was constructed using portions of the 1997 12th District as well of portions of the 2001 12th and 200113th Districts. These three districts were all heavily Democratic. The 2001 13th District, in particular, gained a key portion of its Democrat strength by incorporating highly Democrat VTDs from

the 1997 12th District. Map 16 indicates the portions of these three districts which were incorporated into the new 2011 12th District in Guilford County. To repeat, the GOP policy goal behind the location of the 2011 12th District in Guilford County was to remove as many strong Democrat VTDs from the remainder of the county. This was necessary because the remainder of the county was being placed in the new 2011 6th District. The new 2011 6th District was intended to be a GOP-leaning district. It would not have sufficient GOP voting strength if the portion of Guilford County placed in it was too Democratic. It would have been preferable to move additional Democrat VTDs from Guilford into the new 12th District to further increase the GOP strength of the 2011 6th District. However, this adjustment was not politically advantageous to the Republicans' other political goals vis-a-vis the new 2011 5th, 8th and 9th Districts.

30. I have included three more maps which show the relationship been the 1997 and 2001 12th Congressional Districts and the 2011 12th Congressional District. Map 17 shows the portions of the 6th and 12th Districts from the 1997 Plan which are contained in the new 2011 12th Congressional District. Map 18 show the configuration of both the 1997 and 2011 12th Congressional Districts in Guilford County. Map 19 shows the portions of the 6th, 12th and 13th Districts from the 2001 Plan which are contained in the new 2011 12th Congressional District in Guilford County. These three maps all relate to Map 16.

31. Plaintiffs contend that the increase in the adult total African-American percentage by 6.89% from 43.77% in the baseline 2001 12th Congressional

District to 50.66% in the newly enacted 2011 12th Congressional District proves that the map-drafters were primarily motivated by racial considerations. They imply that because the Democrat, African-American incumbent continued to get reelected in the 43.77% adult total -American 2001 12th District through the preceding decade of elections (2002 through 2010), it was impermissible to increase the adult total African-American percentage in the new 12th District to 50.66%. They ignore the fact that the Democratic presidential voting strength increased by 7.77% from 70.75% to 78.52%, in comparison to the 6.89% increase in the adult total African-American voting age population.

32. After the 2011 Plan had been drawn using political data to construct the 12th District, it would have been possible for the map to have given a final adjustment to reduce the adult total African-American percentage in the new 12th District back down to 43.77% baseline level (the 2010 Decennial Census population of the 2001 12th District) by increasing the adult total African-American percentage by an average of 1.38% in each of the 5 surrounding GOP-leaning districts (Districts 2, 5, 6, 8, and 9). This, of course, would have been setting a racial quota, a process which the drafters of the new map were instructed to avoid by the Chairmen of the General Assembly's Redistricting Committees. The fact remains that the goal of increasing the Democratic voting strength in the 12th District to as high a level as possible, was employed to maximize GOP advantage in the surrounding districts. Nonetheless, the use of only election information resulted in a similar, but somewhat lower increase in the adult total African-American percentage in the new 12th District. This is because the highest areas of Democrat voting

strength happen to be in the stronger minority VTDs in this area of the State. The Supreme Court has noted this fact in the Cromartie decisions.

33. Just to underscore this point, I constructed a new 12th District Plan, using the same incumbent residences with a different set of political priorities. Instead of being concerned about the optimum Republican configuration of the four surrounding districts (5, 6, 8 and 9), I simply maximized the 2008 Obama vote by selecting the VTDs with the highest 2008 Obama vote percentages to include in the sample 12th District. This plan was crafted with a full set of 13 districts with equal population. District 12 in this plan includes a few VTDs that were split to reach out to VTDs with high Obama percentages and to avoid placing incumbents in the same district. Several precincts were also split to improve compactness, and some were split to equalize populations. I called this the "Maximum Obama Vote Plan".

34. When the data for the Maximum Obama Vote Plan 12th District was compared to the 2011 Enacted Plan 12th District, both the adult total African-American Percentage and Obama Vote Percentage increased. There was a 0.07% increase in the adult total African-American Voting Age percentage and a concurrent 1.03% increase in the Obama vote percentage. Once again this indicates that these two percentages are closely linked together and that any significant increase in the Democrat strength in the 12th district resulted in a concurrent increase in the minority percentage (See Table 5).

35. I have included Map 20 which containes outline maps comparing both the 2011 and Maximum Obama Vote Plans as well as Maps 21 through 26 which are detailed county-by-county maps of the Maximum

Obama Vote Plan. On the last six detailed maps the precincts are colored by the McCain percentage, which was actually used when drafting the plan. It is the inverse of the Obama Percentage. The "hotter" the color, the more strongly the VTD voted for President Obama in the 2008 General Election.

36. For all these reasons, Dr. Ansolabehere's analyses are not sufficient to prove that race was the predominant factor in the creation of the Rucho-Lewis Congressional 3 Plan because of his lack of a thorough analysis of the new 2011 Plan in its entirety and determination of how the districts in the 2001 Plan were redrawn to create the new 2011 Plan.

37. It is also my conclusion that all the relevant evidence can only result in the conclusion that politics was the overriding factor and motivation in the creation of the 2011 Congressional Plan.

Stated and signed under penalty of perjury on June 4, 2015.

/s/ Thomas Brooks Hofeller
Thomas Brooks Hofeller, Ph.D

TABLE 1

North Carolina 12th Congressional District

Distribution Among Constituent Counties

Using 2010 Decennial Census Data

County	1997 Plan		2001 Plan		2011 Plan		Obama Max Vote	
Guilford	155,056	19.83%	146,329	19.87%	196,003	26.72%	192,554	26.25%
Forsyth	59,278	7.58%	143,216	19.45%	52,262	7.13%	86,989	11.86%
Mecklenburg	377,530	48.29%	283,419	38.49%	382,379	52.13%	356,807	48.64%
Larger Counties	591,864	75.70%	572,964	77.81%	630,644	85.98%	636,350	86.76%
Cabarrus	-	0.00%	19,345	2.63%	19,345	2.64%	19,345	2.64%
Davidson	91,241	11.67%	82,795	11.24%	40,869	5.57%	40,869	5.57%
Iredell	62,284	7.97%	-	0.00%	-	0.00%	-	0.00%
Rowan	36,466	4.66%	61,242	8.32%	42,641	5.81%	36,935	5.04%
Connector Counties	189,991	24.30%	163,382	22.19%	102,855	14.02%	97,149	13.24%
Total District	781,855	100.00%	736,346	100.00%	733,499	100.00%	733,499	100.00%

Source: United States Census Bureau - 2010 Redistricting Data File

TABLE 2

COUNTY OF MECKLENBURG

POPULATION OF COUNTY IN CONGRESSIONAL DISTRICTS

In Terms of 2010 Decennial Census Total Population

Year of Enactment	12th CD		9th CD		8th CD		Total
1997	377,530	41.06%	541,098	58.94%			919,628
2001	283,419	30.81%	513,445	55.83%	122,764	13.35%	919,628
2011	382,379	41.58%	519,677	56.51%	17,572	1.91%	919,628

Source: 2010 Redistricting Data File - U. S. Bureau of the Census

TABLE 3

COMPARISON OF 2010 CENSUS DATA AND 2008 ELECTION DATA

North Carolina 2001 and 2011 12th Congressional Districts

Year of Plan	18+ Total Population	18+ Total Blk Population	Pct. 18+ Total Blk Population	Total Two-Party Vote 2008 Pres.	2008 Obama Vote	Pct 2008 Obama Vote
2011 12th CD	544,436	275,812	50.66%	291,196	228,644	78.52%
2001 12th CD	550,970	241,158	43.77%	304,843	215,664	70.75%
2011 - 2001			6.89%			7.77%

Source: U.S. Census Bureau 2010 Redistricting Data File and N.C. General Assembly Information Systems Division

TABLE 4

STATE OF NORTH CAROLINA

RACIAL COMPARISON OF 12TH CONGRESSIONAL DISTRICT

2011 ENACTED 12TH DISTRICT COMPARED TO 2001 ENACTED 12TH DISTRICT

SHOWING AREAS COMMON TO BOTH, REMOVED FROM 2011 DISTRICT AND PORTIONS ADDED TO 2011 DISTRICT

Area Examined	2010 Census Data				2008 General Election Data			
	TPOP	18+ TPOP	18+ TBLK	% 18+ TBLK	Total Obama plus McCain	Total Obama	Total McCain	% Obama
Area in New and Old 12th	494,530	368,016	199,534	54.22%	200,925	160,587	40,338	79.92%
Area Only in Old 12th	241,909	183,019	41,671	22.77%	103,956	55,112	48,844	53.01%
Area Only in New 12th	238,988	176,434	76,282	43.24%	90,279	68,063	22,216	75.39%
Percent Added Area Minus Pct. Removed Area				20.47%				22.38%

Population Shift between Old and New 12th Congressional District by County

County	New		Old		New-Old
Guilford	196,003		146,329		49,674
Forsyth	52,262		143,216		-90,954
Davidson	40,869		82,795		-41,926
Rowan	42,641		61,242		-18,601
Cabarrus	19,345		19,345		0
Mecklenburg	382,379		283,419		98,960
Total	733,499		736,346		-2,847
Corridor Total	102,855		163,382		-60,527

TABLE 6
2011 Enacted Congressional Plan

District	18+_Pop	18+ Non-Hisp White		18+ AP Blk		President 2008					18+ Hispanic	
		Number	Percent	Number	Percent	Total Two-Party	Obama	Percent Obama	McCain	Percent McCain	Number	Percent
1	561,468	218,272	38.88%	298,808	52.97%	291,825	254,606	70.89%	98,247	27.09%	36,888	6.57%
2	557,368	378,368	70.35%	98,091	18.59%	301,400	131,888	43.76%	169,517	56.24%	48,407	8.63%
3	571,238	422,725	74.00%	105,182	18.41%	300,308	129,781	43.21%	170,527	56.79%	30,148	5.28%
4	662,911	388,264	58.58%	179,108	31.71%	336,085	246,597	73.73%	89,488	27.27%	54,491	9.86%
5	557,551	451,880	81.05%	69,913	12.54%	305,188	146,111	47.88%	159,327	52.12%	35,885	6.50%
6	580,577	405,177	69.79%	83,822	14.80%	307,888	135,317	43.72%	201,388	56.28%	24,945	4.30%
7	669,052	488,882	72.98%	97,280	17.38%	332,488	138,112	41.80%	192,348	58.19%	40,888	7.30%
8	557,088	388,388	69.78%	100,017	18.28%	288,725	125,016	43.08%	165,207	57.08%	35,888	6.56%
9	580,894	414,182	71.31%	98,888	17.28%	327,184	157,780	48.88%	169,404	51.82%	35,788	6.81%
10	669,043	488,711	72.98%	80,287	11.99%	338,124	140,080	42.42%	190,034	57.58%	25,410	4.49%
11	581,897	388,818	66.77%	18,781	3.23%	333,713	138,841	41.81%	193,872	58.09%	24,318	4.18%
12	544,438	178,228	32.74%	273,812	50.29%	297,188	228,844	78.53%	62,882	21.48%	65,748	12.08%
13	540,881	397,074	73.44%	92,008	17.02%	301,455	164,088	45.38%	197,388	54.81%	33,330	6.53%

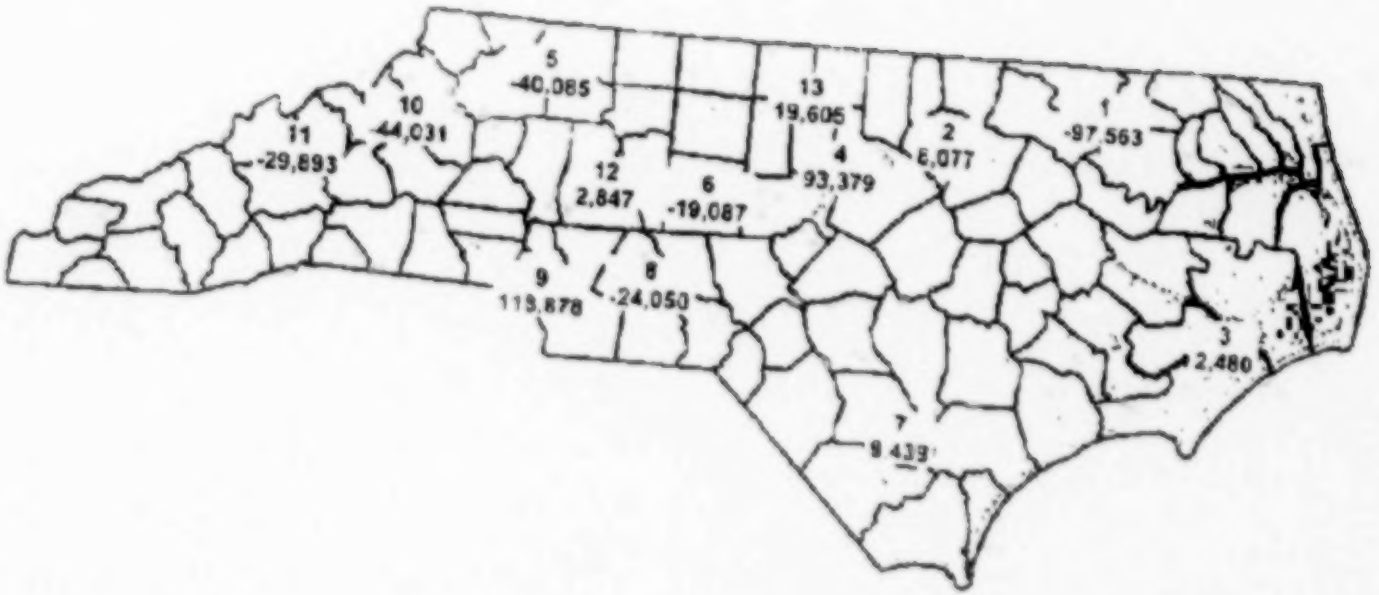
2011 Congress Maximum Obama Vote

District	18+_Pop	18+ Non-Hisp White		18+ AP Blk		President 2008					18+ Hispanic	
		Number	Percent	Number	Percent	Total Two-Party	Obama	Percent Obama	McCain	Percent McCain	Number	Percent
1	561,468	218,272	38.88%	298,808	52.97%	291,825	254,606	70.89%	98,247	27.09%	36,888	6.57%
2	538,141	378,368	70.35%	98,091	18.59%	301,400	131,888	43.76%	169,517	56.24%	48,407	8.63%
3	571,238	422,725	74.00%	105,182	18.41%	300,308	129,781	43.21%	170,527	56.79%	30,148	5.28%
4	662,911	388,264	58.58%	179,108	31.71%	336,085	246,597	73.73%	89,488	27.27%	54,491	9.86%
5	557,551	451,880	81.05%	69,913	12.54%	305,188	146,111	47.88%	159,327	52.12%	35,885	6.50%
6	580,577	405,177	69.79%	83,822	14.80%	307,888	135,317	43.72%	201,388	58.28%	24,945	4.30%
7	669,052	488,882	72.98%	97,280	17.38%	332,488	138,112	41.80%	192,348	58.19%	40,888	7.30%
8	557,088	388,388	69.78%	100,017	18.28%	288,725	125,016	43.08%	165,207	57.08%	35,888	6.56%
9	580,894	414,182	71.31%	98,888	17.28%	327,184	157,780	48.88%	169,404	51.82%	35,788	6.81%
10	669,043	488,711	72.98%	80,287	11.99%	338,124	140,080	42.42%	190,034	57.58%	25,410	4.49%
11	581,897	388,818	66.77%	18,781	3.23%	333,713	138,841	41.81%	193,872	58.09%	24,318	4.18%
12	544,438	178,228	32.74%	273,812	50.29%	297,188	228,844	78.53%	62,882	21.48%	65,748	12.08%
13	540,881	397,074	73.44%	92,008	17.02%	301,455	164,088	45.38%	197,388	54.81%	33,330	6.53%

Source: U. S. Census Bureau 2010 Decennial Census and N. C. Legislative Services Department Election Results from State Board of Elections

MAP 1

2001 CDs Showing 2010 Population Deviations

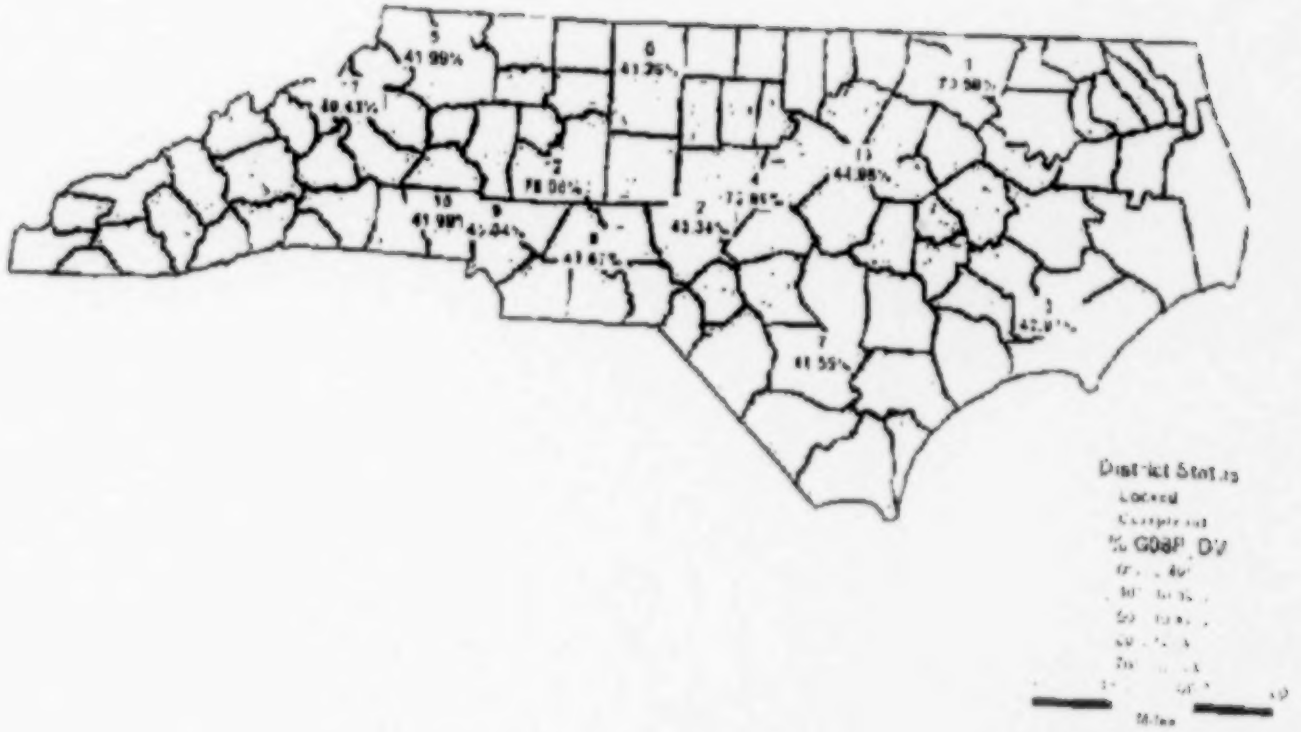


MAP 2

2001 CDs Showing 2008G Obama Percentage



MAP 3
2011 CDs Showing 2008G Obama Percentage



MAP 4

1997 North Carolina Congressional Districts

Central Portion of State



MAP 5

2001 North Carolina Congressional Districts

Central Portion of State



MAP 6

2011 North Carolina Congressional Districts

Central Portion of State



MAP 7

2001 North Carolina Congressional Districts

13th Congressional District



MAP 8

2001 North Carolina 13th Congressional District

Showing Portions Placed in 2011 Districts



Red to New 12, Blue to New 6, Green to New 4, Yellow to New 13, Orange to New 1, remainder to New 2.

MAP 9

Versions of 12th Congressional District Enacted in 1997, 2001 and 2011

Showing the Entire District



1997 Enacted



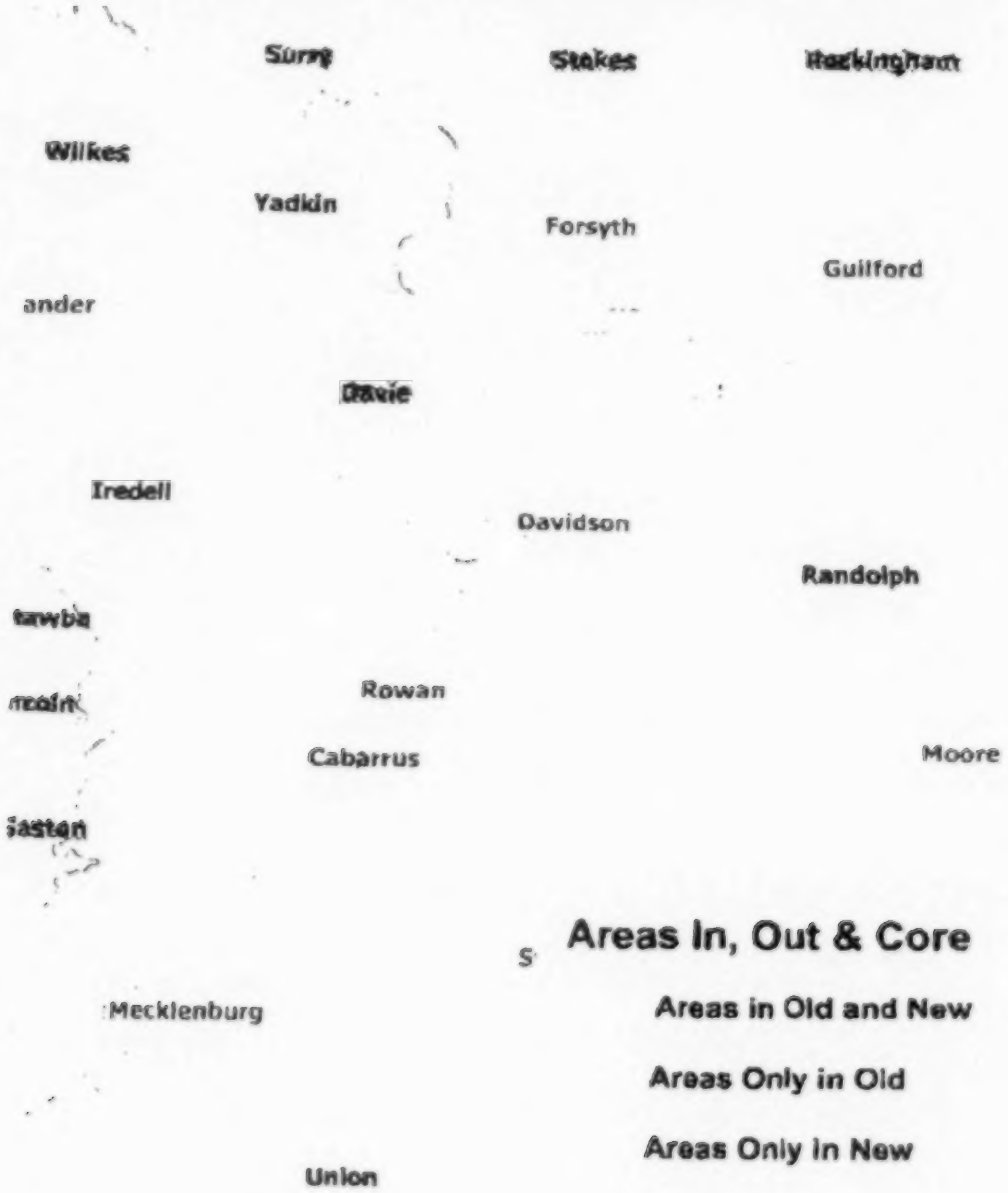
2001 Enacted



2011 Enacted

MAP 10

Comparison of 2001 and 2011 12th Congressional District



MAP 11

Versions of 12th Congressional District Enacted in 1997, 2001 and 2011

Showing the Guilford County Portion of the District



1997 Enacted

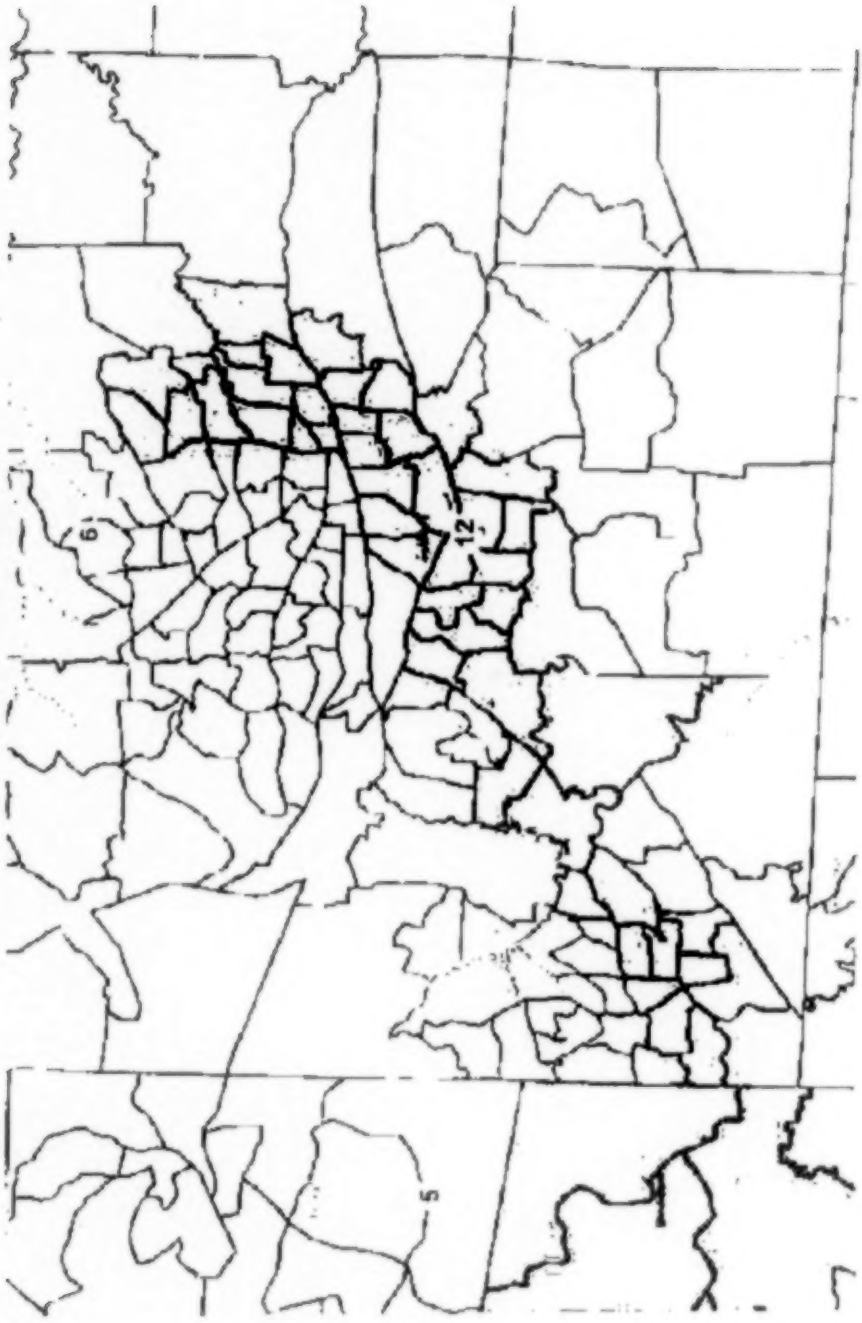
2001 Enacted

2011 Enacted

MAP 12

1997 North Carolina Congressional Districts

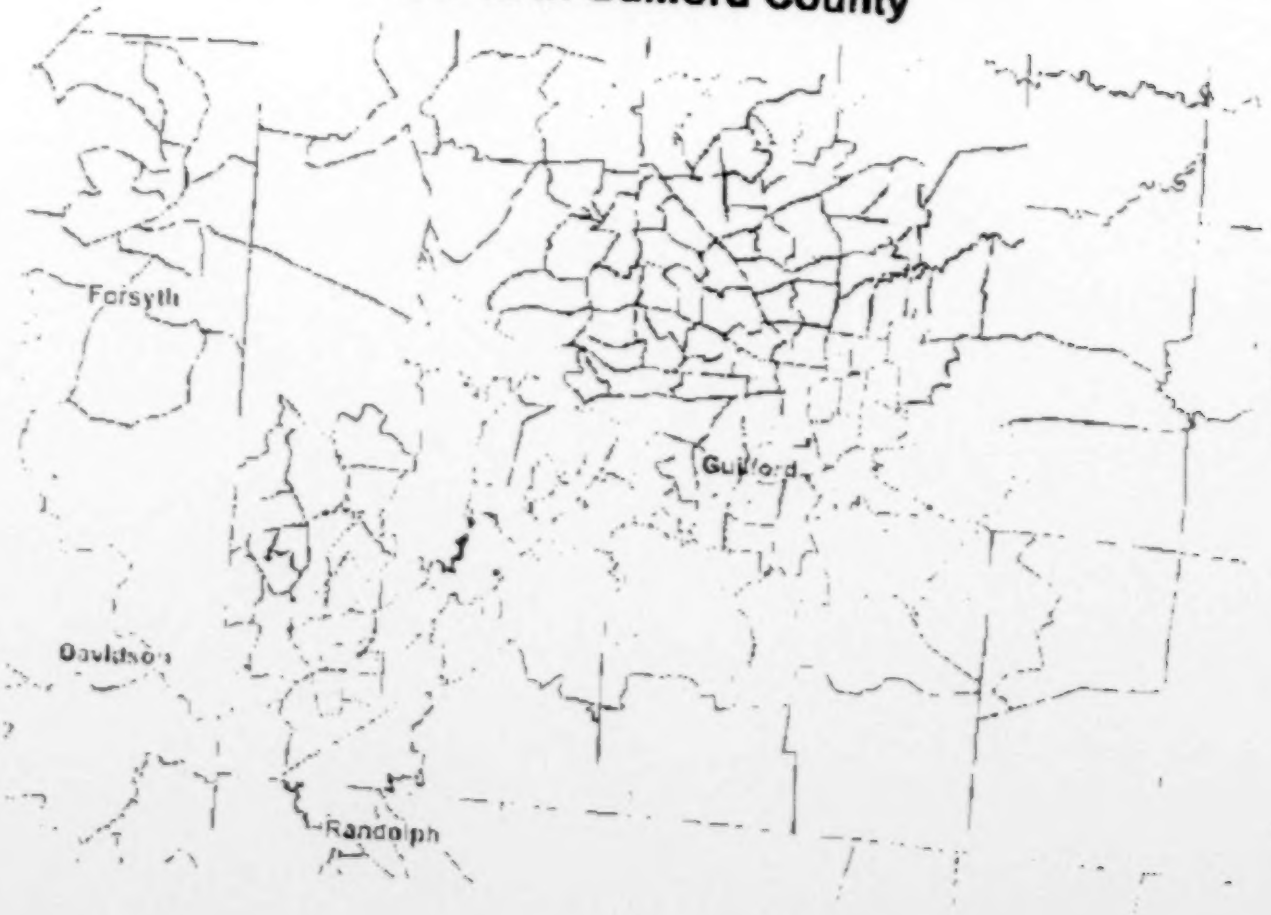
CD 12 in Guilford County



MAP 13

2001 North Carolina Congressional Districts

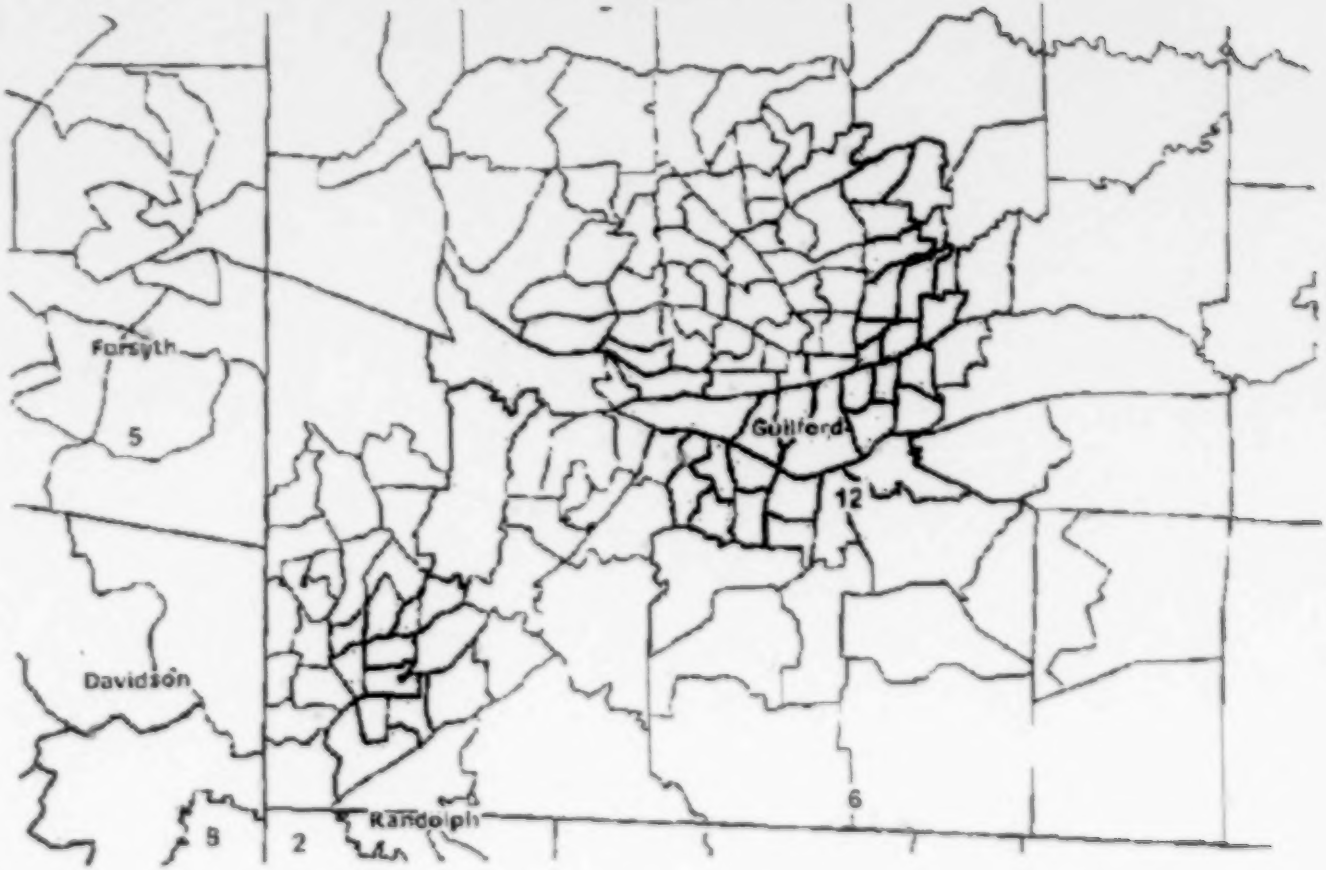
CD 12 in Guilford County



MAP 14

2011 North Carolina Congressional Districts

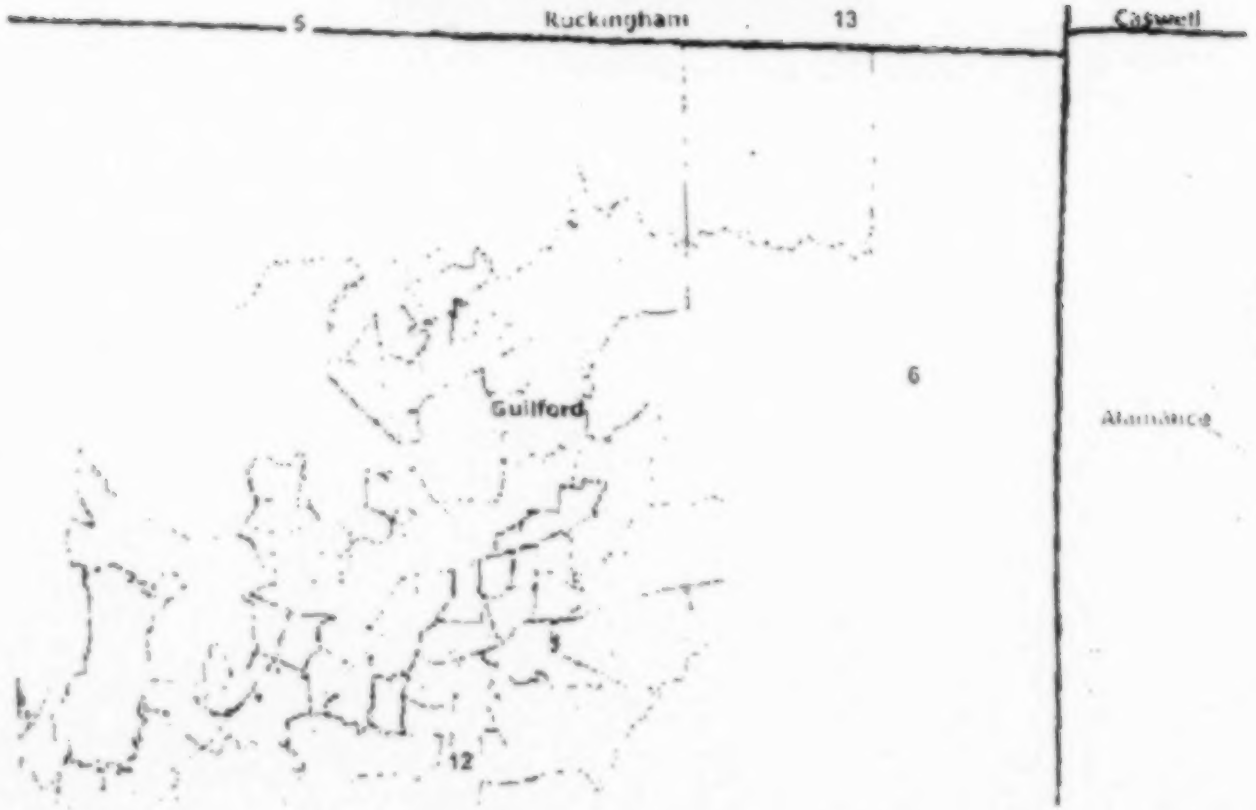
CD 12 in Guilford County



MAP 15

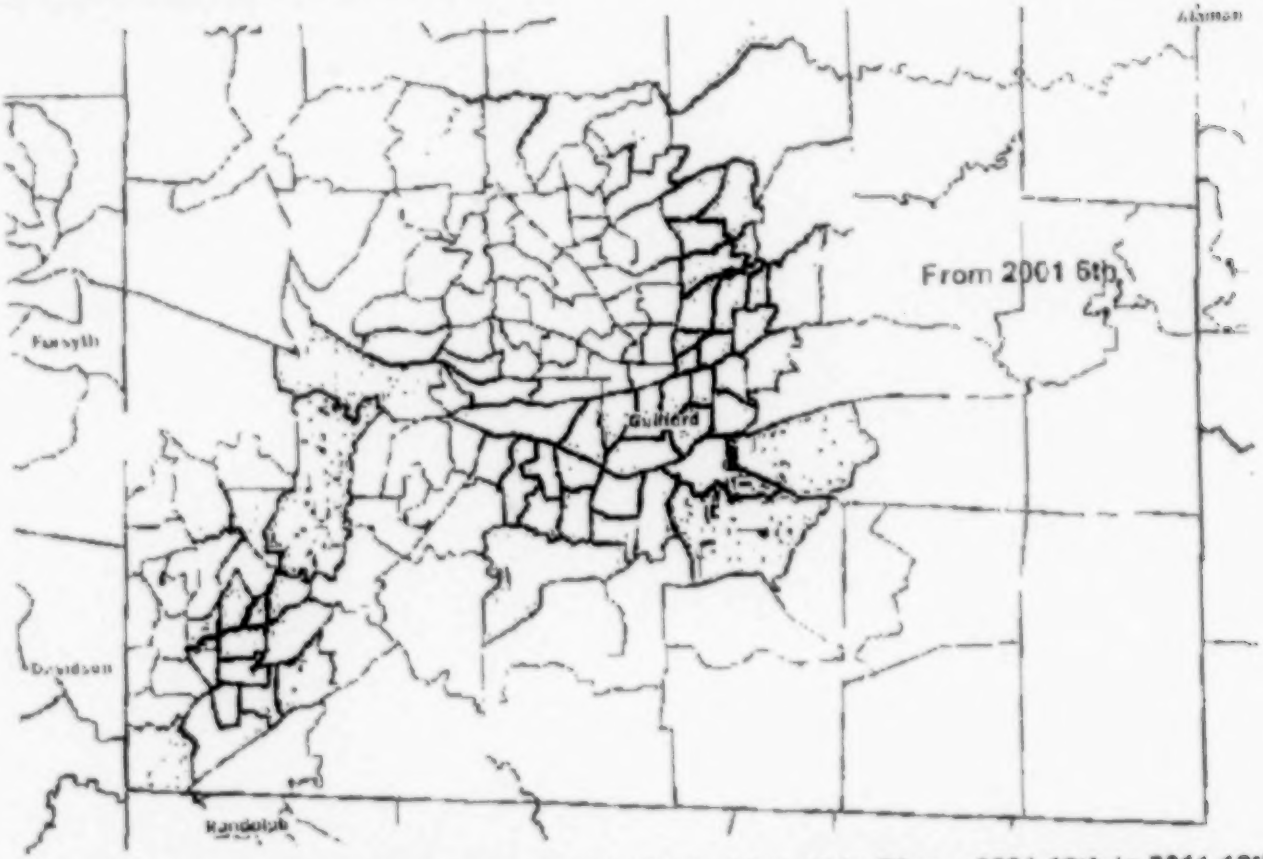
2001 North Carolina Congressional Districts

CD 13 in Guilford County



MAP 16

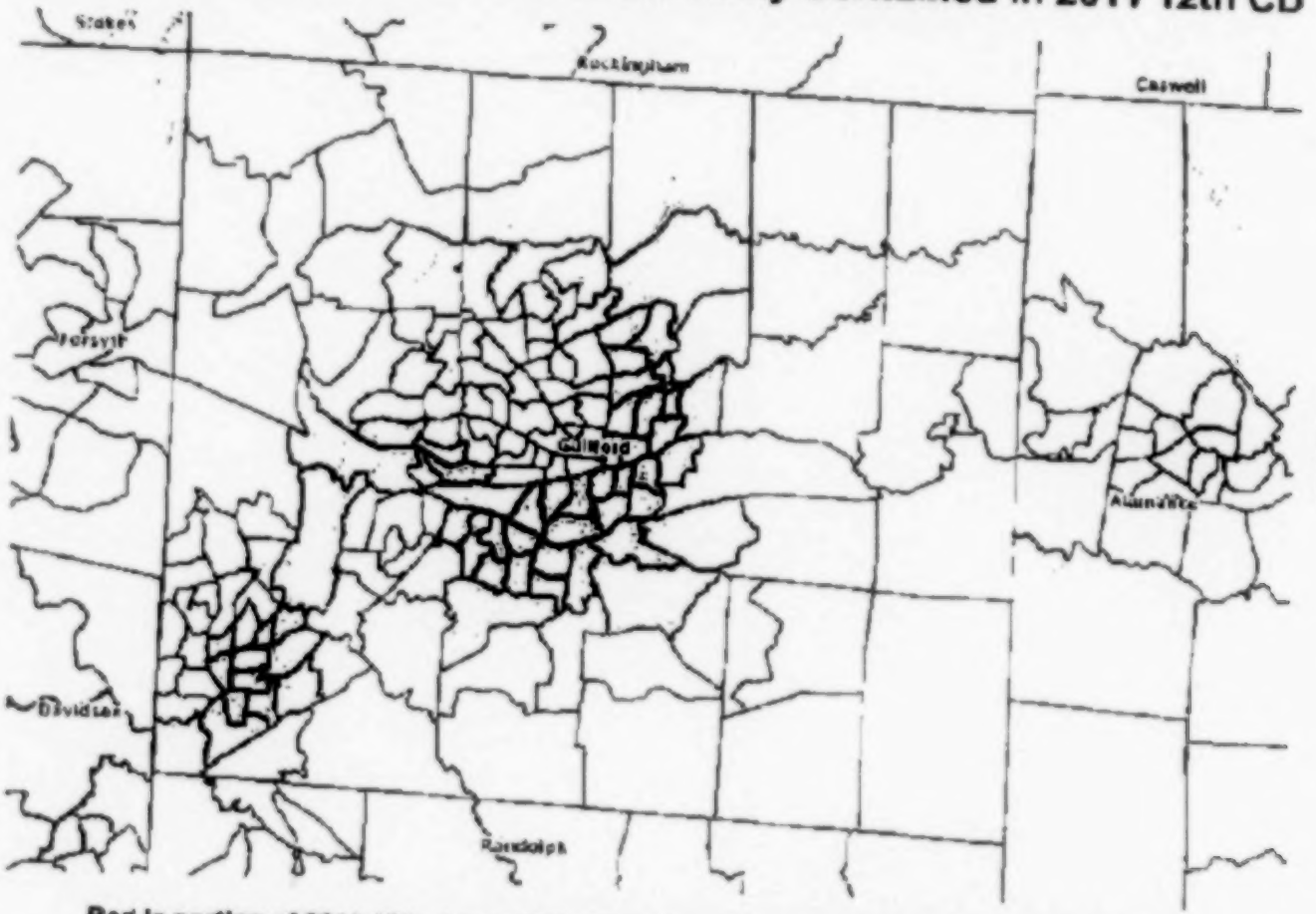
Origins of Enacted 12th from Either 1997 12th or 2001 12th and 13th



Red = 1997 12th in 2011 12th; Green = 2001 13th in 2011 12th; Blue = 2001 12th in 2011 12th

MAP 17

Portions of 1997 CDs in Guilford County Contained in 2011 12th CD

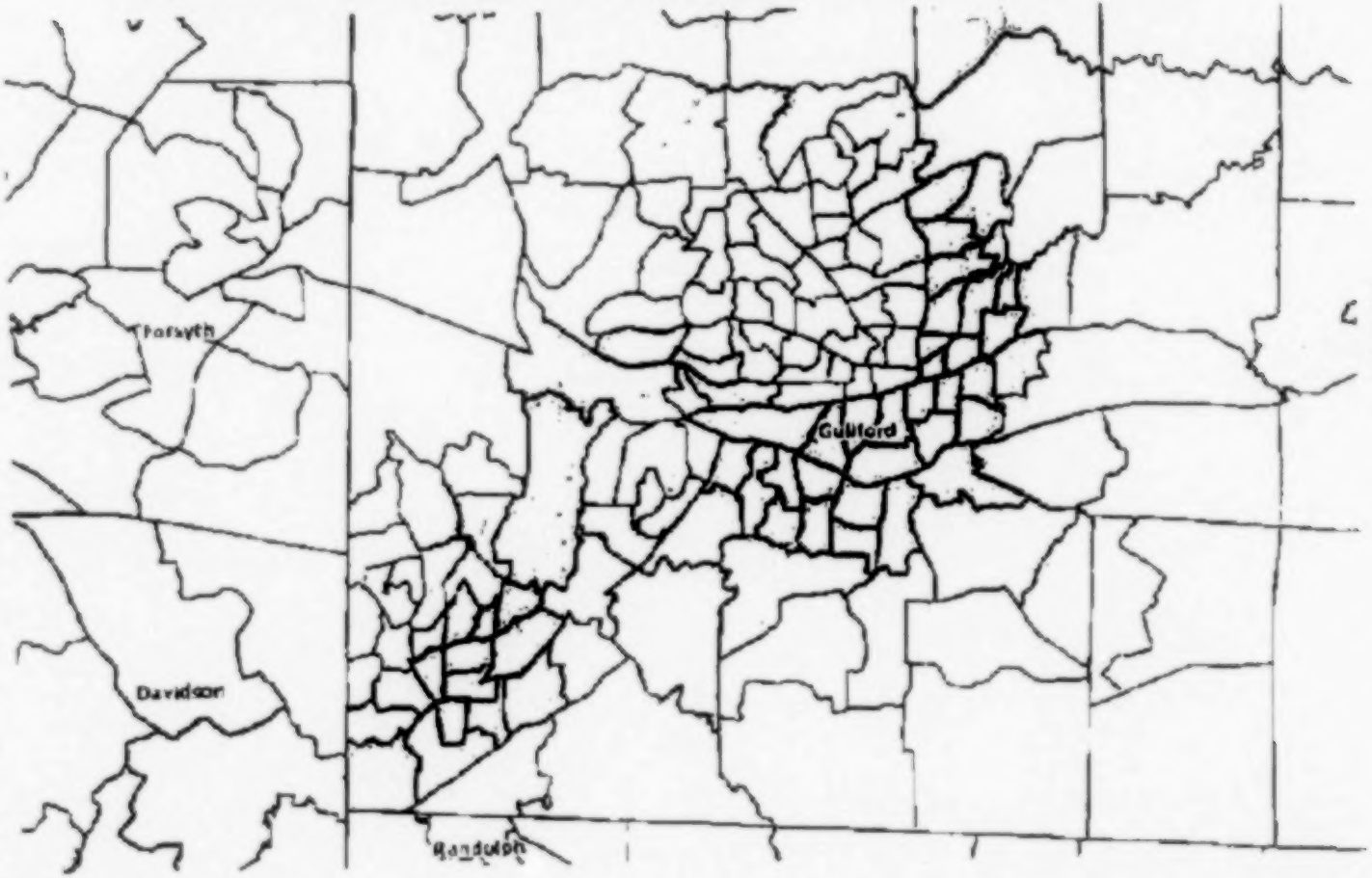


Red is portion of 2011 12th from 1997 12th – Green is portion of 2011 12th from 1997 8th

MAP 18

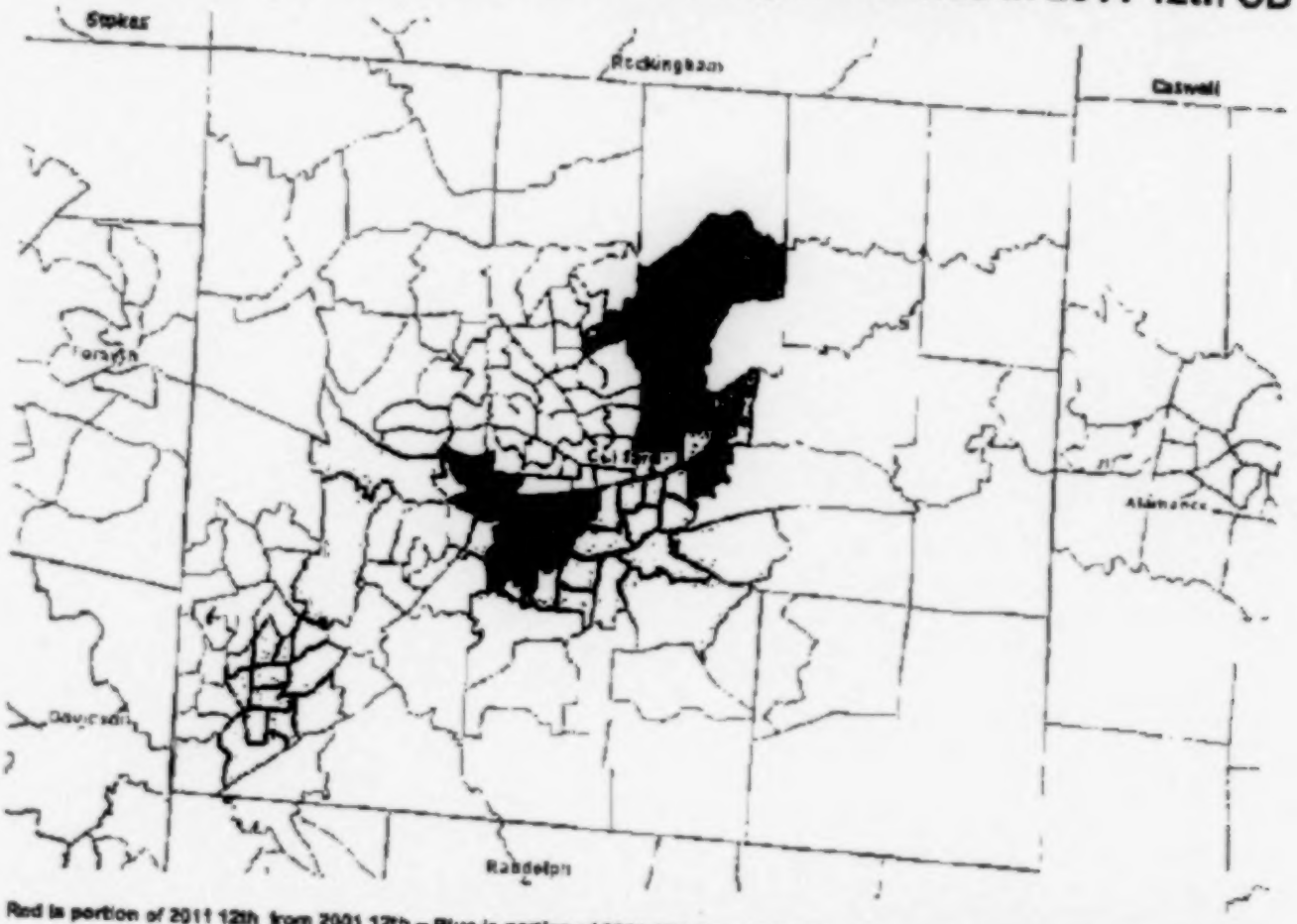
Comparison of Areas in 1997 and 2011 12th CDs

Red and Green are 2011 and Red and Orange are 1997



MAP 19

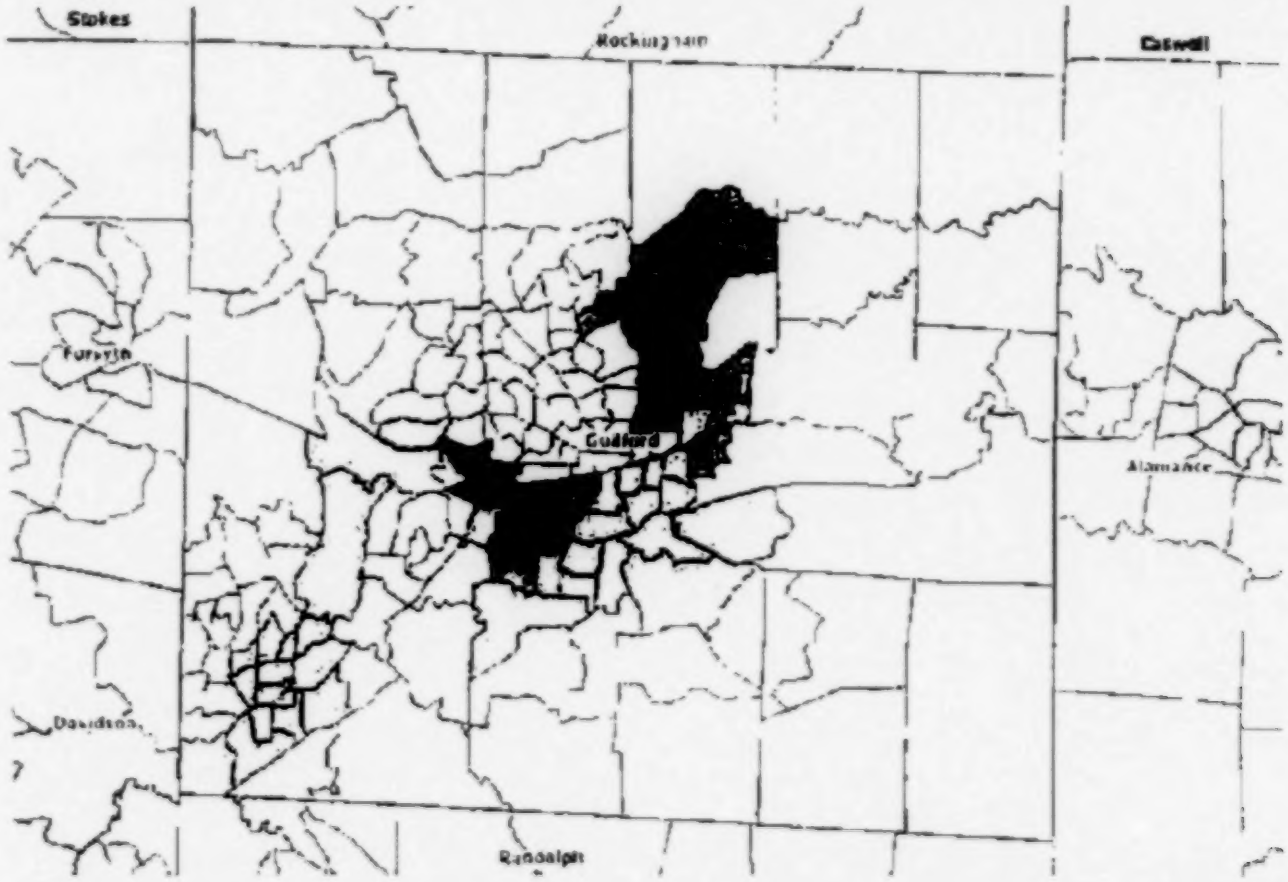
Portions of 2001 CDs in Guilford County Contained in 2011 12th CD



Red is portion of 2011 12th from 2001 12th – Blue is portion of 2011 12th from 2001 13th -- Green is portion of 2011 12th from 2001 6th

MAP 19

Portions of 2001 CDs in Guilford County Contained in 2011 12th CD



Red is portion of 2011 12th from 2001 12th – Blue is portion of 2011 12th from 2001 13th – Green is portion of 2011 12th from 2001 6th

MAP 20

Comparison of 12th Congressional Districts

District 2011 Enacted Plan



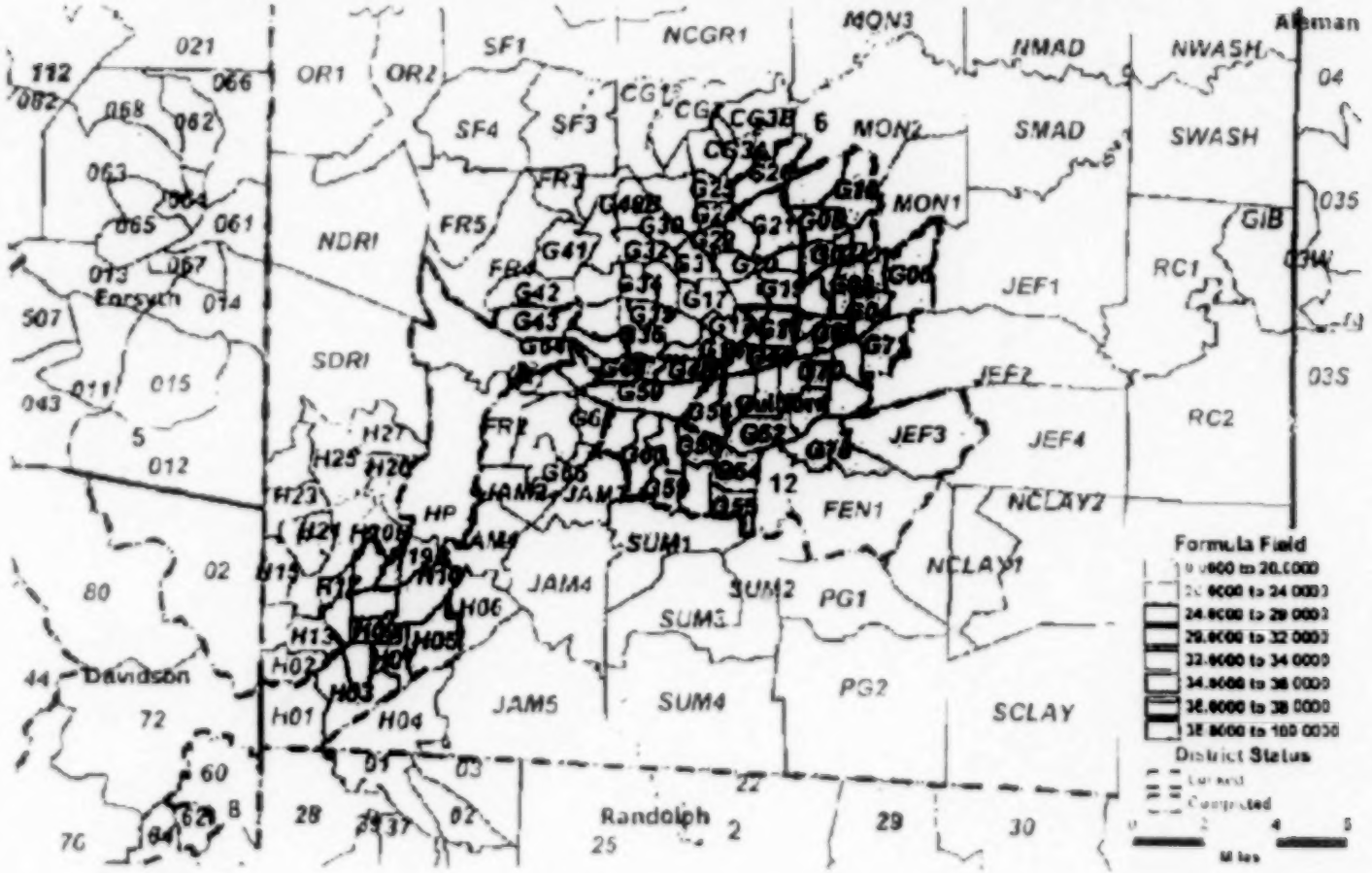
District 12 With Max Obama Vote



MAP 21

12th CD Maximum Obama Vote Plan by VTD

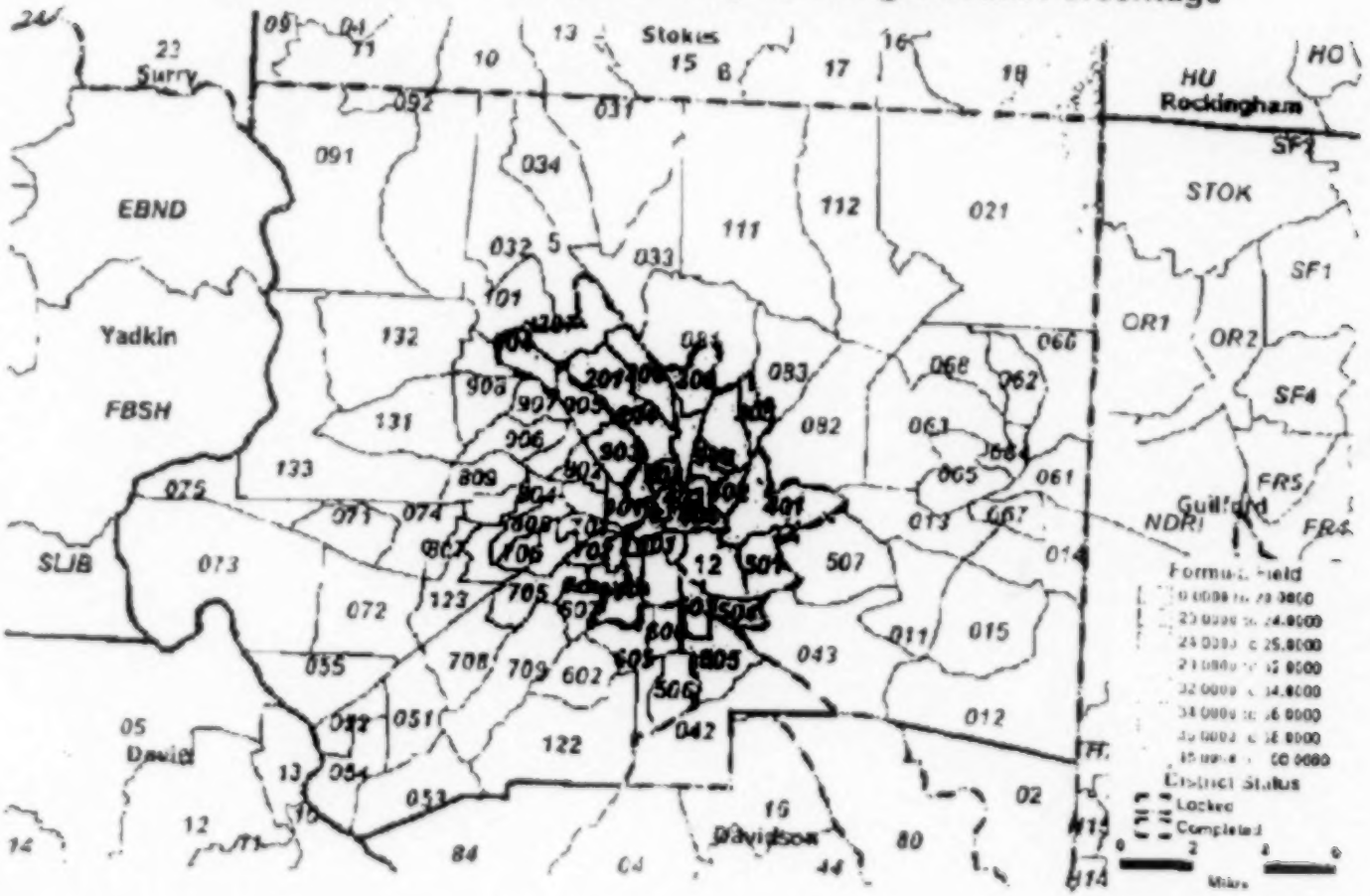
Portion of District in Guilford County Showing Percent McCain



MAP 22

12th CD Maximum Obama Vote Plan by VTD

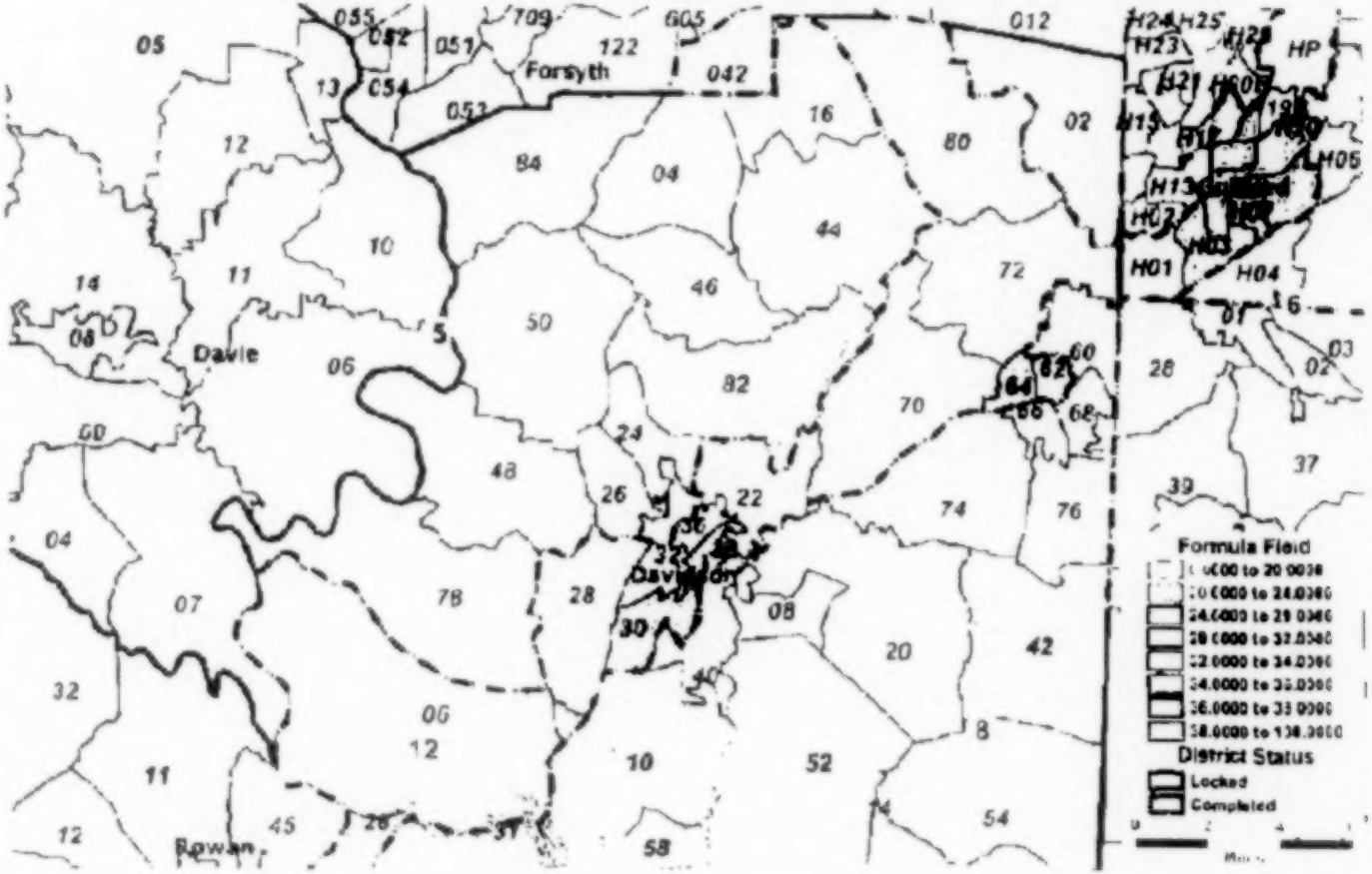
Portion of District in Forsyth County Showing McCain Percentage



MAP 23

12th CD Maximum Obama Vote Plan by VTD

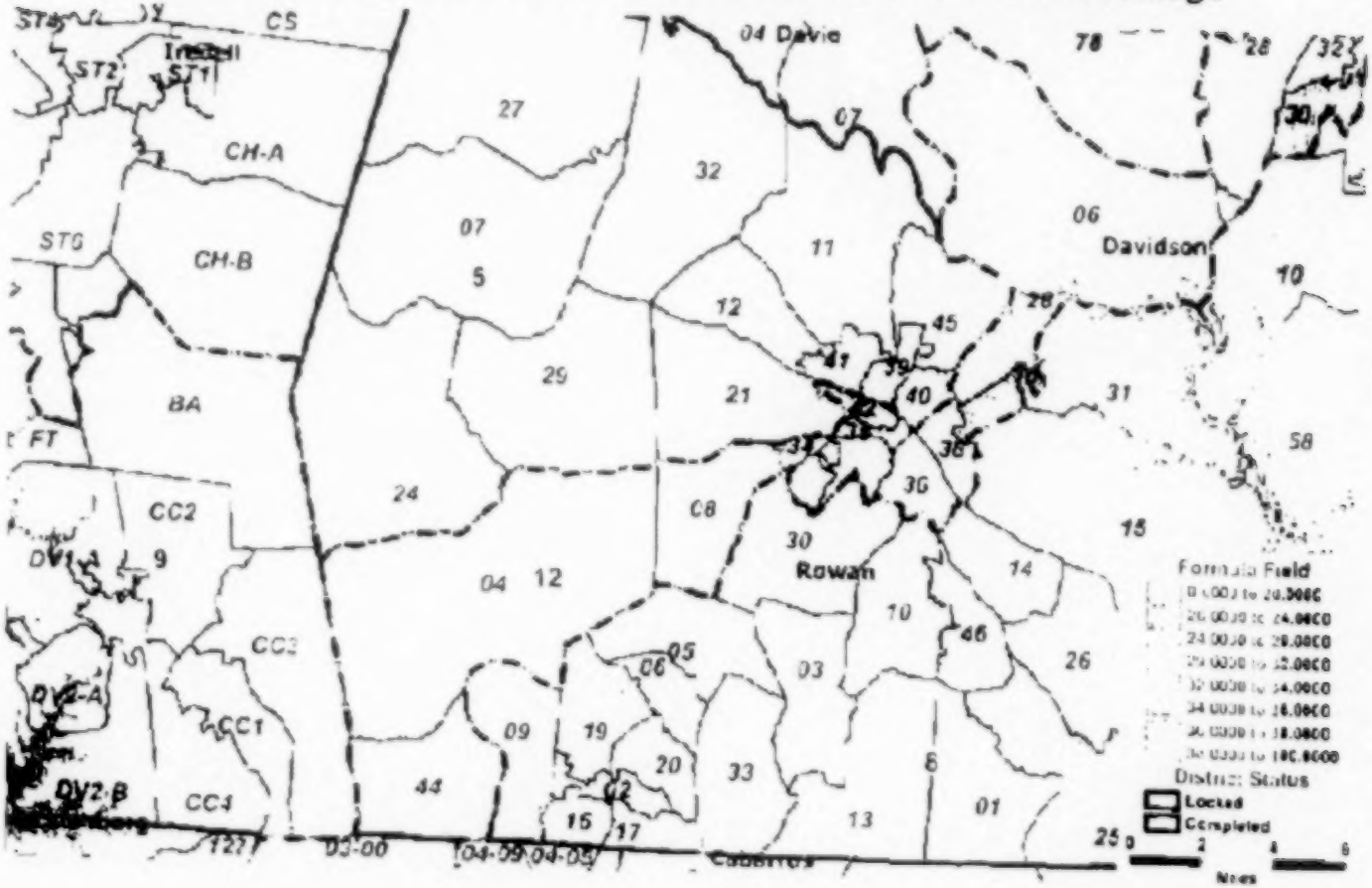
Portion of District in Davidson County Showing McCain Percentage



MAP 24

12th CD Maximum Obama Vote Plan by VTD

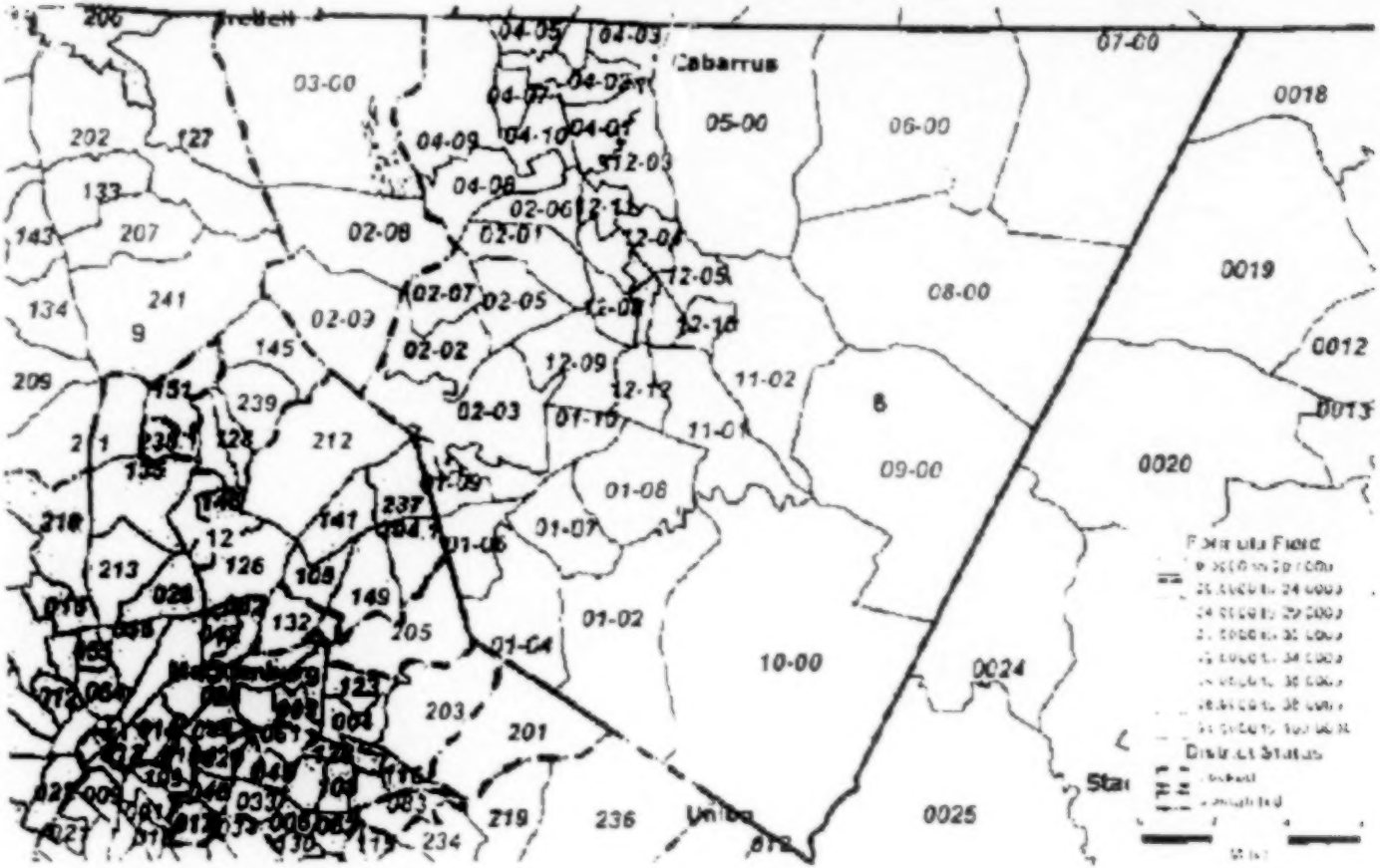
Portion of District in Rowan County Showing McCain Percentage



MAP 25

12th CD Maximum Obama Vote Plan by VTD

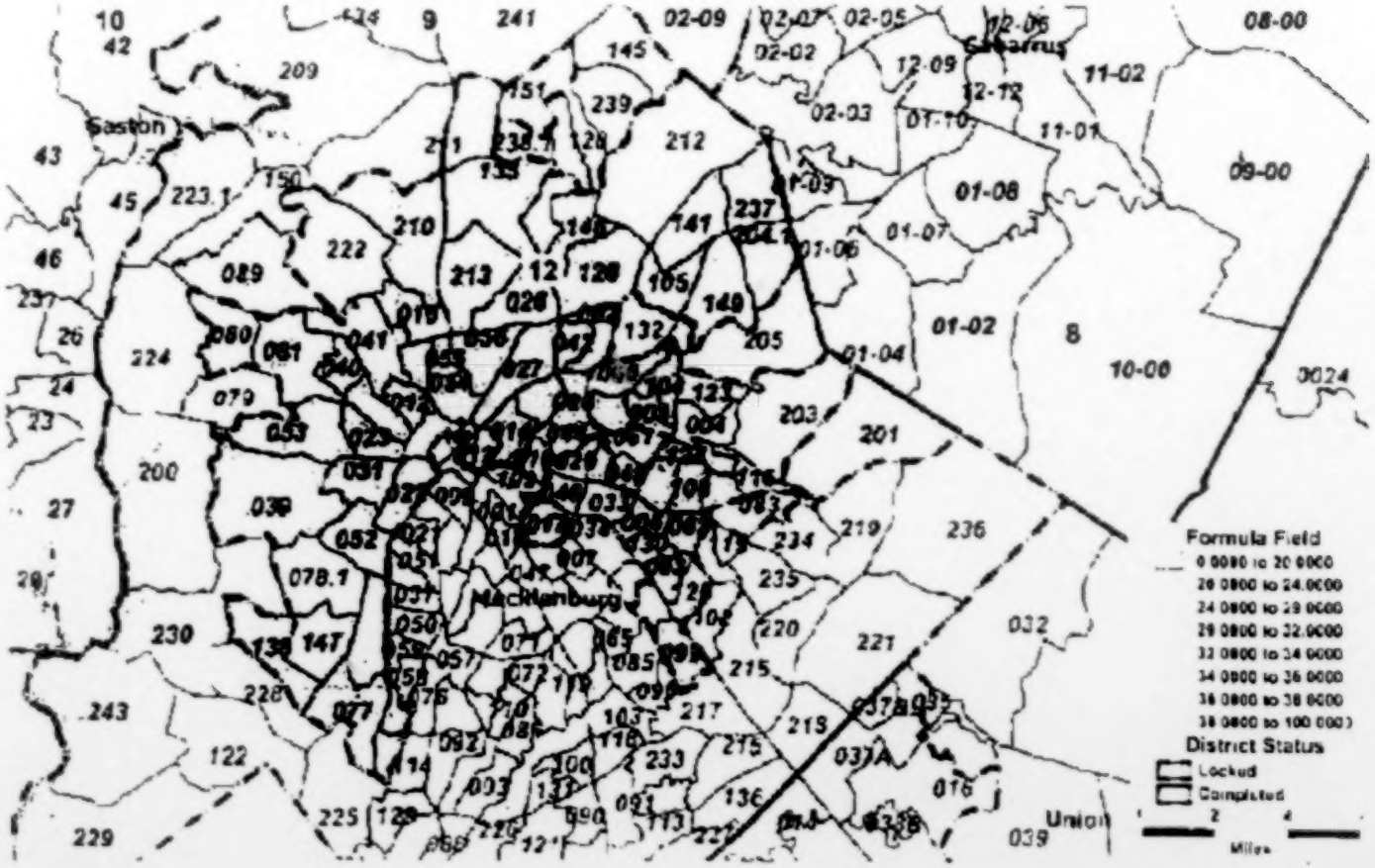
Portion of District in Cabarrus County Showing McCain Percentage



MAP 26

12th CD Maximum Obama Vote Plan by VTD

Portion of District in Mecklenburg County Showing McCain Percentage



RESUME

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QUALIFICATIONS:

A varied career in government, business, academia and politics. Positions of significant responsibility, requiring intelligence, scholarship, communications skills, creativity and leadership include:

- Senior executive management of an office within a large government agency, planning and directing operations of a staff with a diverse number of missions while coordinating activities ranging across an entire agency.
- Successful completion of a Doctorate in Government requiring research and writing skills and the ability to communicate in an academic setting. Also includes a firm grounding in the philosophical and political roots of the American Governmental System.
- Litigation support and courtroom experience as a qualified expert witness in federal court. Clear presentation of difficult demographic and statistical concepts — making them understandable to non-technical audiences.
- Setting up a new U. S. House subcommittee and conducting oversight, developing legislation and interacting with leadership. Experience in statistical, demographic and budgetary analysis.
- Experience in management and information systems — including database construction,

geographic information systems and creation of user interfaces that allow access by persons without extensive computer skills.

- Creating and managing small businesses, including budgeting, human resources, facilities management, accounting and shareholder interface.
- Strategic and tactical analysis of political and demographic data for campaigns and political organizations. Understanding of survey design and interpretation, political resource targeting, list development and use of direct mail.

AREAS OF EXPERTISE:

- *Operations*: Recruiting, training and directing staffs for existing and newly instituted projects in government and national political organizations. Private sector experience as a business owner and CAO. Proven ability to organize and direct multiple projects with effective use of delegation. Able to function as a team player in both management and support positions.
- *Communications*: Ability to develop and deliver engaging and informative presentations involving difficult concepts and issues to decision-makers, the public and press. Effective in preparation of affidavits and exhibits as well as giving depositions and delivering courtroom testimony.
- *Information Technology*: Expertise in analysis of complex technical problems involving large amounts of data — both for analysis and practical use in business, government and politics. Able to break down information and develop effective

solutions. Ability to interface between highly technical personnel and management.

- Considerable experience in integration of mapping and data (geographic information systems).
- *Budget & Programs*: Experience in budget formulation and managing accurate accounting systems in the private and public sectors.

EDUCATION:

- Claremont Graduate University, Claremont, CA — Ph.D. in Government – 1980
- Claremont McKenna College, Claremont CA — B. A. in Political Science – 1970
- U. S. Navy, Electronics School, Treasure Island, CA, Graduate -1966

PUBLICATIONS:

- Thomas S. Engeman, Edward J. Erler and Thomas B. Hofeller (1980. Thy Federalist Concordance. Chicago: University of Chicago Press.
- Grofman, Bernard and Hotelier, Thomas B (1990). "Comparing the Compactness of California Congressional districts Under Three Different Plans". In Bernard Grofman (ed) Political Gerrymandering and the Courts. New York: Agathon.
- Richard Niemi, Bernard Grofman, Thomas Hotelier, and Carl Carlucci (1990). Measuring the Compactness and the Role of a Compactness Standard in a Test for Partisan Gerrymanderings". Journal of Politics.

- Reports and affidavits prepared for, and testimony in, numerous court cases (listed below).

REFERENCES:

Current and recent employer references are available and will be furnished upon request.

EXPERIENCE:

Geographic Strategies LLC
7119 Marine Drive
Alexandria, Virginia 22307

Partner
May 2011 — present

Geographic Strategies provides redistricting services clients including database construction, strategic political and legal planning in preparation for actual line drawing, support services and training on the use of geographic information systems (GIS) used in redistricting, analysis of plan drafts, and actual line-drawing when requested. The corporation and its principals also provide litigation support.

State Government Leadership Foundation
1800 Diagonal Road, Suite 230
Alexandria, VA 22314

Redistricting Consultant
April 2011 — April 2012

Contracting Officer:
J. Christopher Jankowski
Executive Director
(571-480-4861

Retained as a consultant to state legislatures and statewide elected officials in all aspects of their work on the 2011-2012 redistricting process.

Areas of consultation:

- Develop strategic and tactical plans for Legislatures and statewide elected officials to develop and defend redistricting plans for legislative and congressional districts.
- Providing assistance in actual redistricting plan drafting and analysis.
- Providing a linkage between complex legal standards and their practical application to plan drafting in difficult political and technical environments.
- Provide assistance in redistricting litigation
- Identification of specialized GIS software, database and hardware systems; to be used by stakeholders.
- Ongoing strategic, technical and legal support to those involved in redistricting in all states.
- Development of a clearinghouse of redistricting activities throughout the nation and analysis of the effects of the process on future elections.

REPUBLICAN NATIONAL COMMITTEE
310 First Street, S.E.
Washington, DC 20003

Redistricting Consultant

May 2009 — April 2011

Contracting Officer. John Phillippe
RNC Chief Counsel
(202) 863-8638

Retained as a consultant to recreate a new department to coordinate the redistricting activities of the National Committee and the greater GOP

community in preparation and execution of the 2011 redistricting Areas of responsibility and to support the Committee's 2011 through 2012 redistricting efforts:

- Developed a strategic plan for the Committee to best position itself for maximum success in this highly competitive process.
- Liaison and training with members of Congress, legislators, key statewide officials, state parties and other divisions within the Committee to ensure a high level of political, technical and legal preparation.
- Recruitment and training of a technical and legal staff
- Providing a linkage between complex legal standards and their practical application to plan drafting in difficult political and technical environments
- Identification of specialized GIS software, database and hardware systems to be used by the Committee and other stakeholders.
- Ongoing strategic, technical and legal support to members of congress and those involved in redistricting in all states, including plan drafting.
- Development of a clearinghouse of redistricting activities throughout the nation and analysis of the effects of the process on future elections.

DEPARTMENT OF AGRICULTURE FARM SERVICE AGENCY
1400 Independence Avenue
Washington, DC 20250

Associate Administrator for Operations and Management

June 2004 — January 2009

Supervisor: Teresa C Lasseter, Administrator
Farm Service Agency
(229) 890-9127

Associate Administrator providing management and oversight to staff with diverse missions supporting the activities of the entire Farm Service Agency (FSA).

Areas of responsibility:

- Provides oversight and guidance to the 1,100 person staff of the Deputy Administrator for Management. These functions include management services, human resources, financial management, budgeting, and information technology.
- Directs the activities of the Office of Civil Rights which performs all of the EEO functions for the Agency, as well managing FSA's diversity programs.
- Provides oversight and guidance to the Office of Business and Program Integration. This office supports a wide range of cross-cutting activities including economic policy analysis, strategic planning, outreach, state and county office review, county service center integration, emergency planning, county office reviews and audits, e-Government, and program appeals and litigation.
- Has primary oversight of the business realignment process underway in the Agency. This realignment includes such projects as Agency-wide enterprise architecture development, field office realignment, and concurrent changes to the Agency's business processes. This

realignment is necessary to allow the Agency to meet the present and future challenges involved in providing the best possible customers service and implementation the President's Management Agenda.

- Spearheads the ongoing reform of the FSA county committee election system which included the drafting of guidelines just published in the Federal Register.

DEPARTMENT OF AGRICULTURE FARM SERVICE AGENCY
1400 Independence Avenue
Washington, DC 20250

Director, Office of Business and Program Integration
Apr. 2003 — June 2004

Supervisor. Verle Lanier, Associate Administrator for Operations and Management (retired)
(301) 424-5776

Director of a senior level office directing the activities of subordinate staffs with diverse missions supporting the overall activities of the Farm Service Agency.

Areas of responsibility:

- Provided oversight and guidance to the 75-person staff of the Office of Business and Program Integration. This office supported a wide range of cross-cutting activities including economic policy analysis, strategic planning, outreach, state and, county office review, county service center integration, emergency planning, county office reviews and audits, e-Government, and program appeals and litigation.

- Directed the development of administrative strategies essential to the successful management of e-Government initiatives. Coordinated citizen-centered eGovernment initiatives.
- Provided centralized direction for the Agency's strategic plan in compliance with the Government Performance and Results Act of 1993.
- Coordinated outreach efforts for all FSA programs to enhance participation of small or limited resource farmers and ranchers to provide equal access to programs striving to acquire and maintain economic viability for family farmers and ranchers.
- Directed the preparation of policies and dockets on national program determinations to be submitted for CCC Board consideration and Federal Register publications.

REPUBLICAN NATIONAL COMMITTEE
310 First Street, S.E.
Washington, DC 20003

Redistricting Director
Jul. '99 — Mar. 2003

Supervisor: Thomas Josefiak, former RNC Chief Counsel
(703) 647-2940

Hired to create a new department to coordinate the redistricting activities of the National Committee mandated by the release of data from the 2000 Decennial Census.

(See the description of present position.)

U. S. HOUSE SUBCOMMITTEE ON THE CENSUS

Staff Director
Feb. '98 - Jul. '99

Supervisor: Hon. Dan Miller, Chairman
(202) 225-5015

Staff Director at inception of this oversight subcommittee, created by the House in February of 1998, to monitor the preparations for and the execution of the 2000 Decennial Census. Directed all day-to day operations of the subcommittee including:

- Recruitment and training of a staff for a new subcommittee.
- Liaison with the Director and Senior Staff of the Census Bureau, the Department of Commerce, and U.S. Senate Staff involved in census oversight.
- A complete examination of the preparations underway at the Census Bureau for conduct of the 2000 Decennial Census.
- An examination of the proposed statistical methods proposed by the Bureau to improve coverage of the Census.
- Reviewed and made recommendations to the Chairman and House Leadership regarding census policy.
- Coordination with Government Accounting Office personnel involved in census oversight.
- Preparation and support for oversight hearings conducted by the members of the Sub-committee.
- Interface between the academic statistical community and the subcommittee in the development of census policy.

- Liaison with census stakeholders in general, with particular attention to members of the Decennial Census Advisory Committees.

U. S. HOUSE COMMITTEE ON HOUSE OVERSIGHT
Professional Staff
Nov. '97 - Feb. '98

Supervisor. Hon. William M. Thomas, Chairman
(202) 225-2915

EXHIBIT J

Congressman Melvin L. Watt letter dated July 8, 2011

[LOGO]

HOUSE OF REPRESENTATIVES

WASHINGTON, D.C. 20515

Melvin L. Watt
12th District, North Carolina

July 8, 2011

Senator Bob Rucho
North Carolina Senate
300 North Salisbury Street
Room 300-A
Raleigh, North Carolina 27603-5925

Rep. David Lewis
North Carolina House of Representatives
300 North Salisbury Street
Room 534
Raleigh, North Carolina 27603-5925

I have been provided a copy of the "Statement by Sen. Bob Rucho and Rep. David Lewis Regarding Proposed VRA Districts" ("the Statement") that you issued "in anticipation of the public hearing scheduled for June 23, 2011." I am writing to correct statements that you attributed to me in Claim 2 of the Statement that you either misconstrued or misrepresented. Please include this letter in the public record as a means of correcting your misstatements.

First, I want to be clear that I have never met with Rep. Lewis or discussed redistricting or any other matter with him. Additionally, I considered any phone conversations and meetings I had with Sen. Rucho as

personal, "off-the-record" conversations based on our longstanding personal friendship. I am disappointed that these conversations have been taken out of context, misrepresented and made a part of the public record, apparently for partisan political purposes.

Second the characterizations of statements attributed to me in Claim 2 of the Statement are misleading and inaccurate in the following respects:

a) Any comments I made related solely to congressional districts and federal matters and I never made any statements whatsoever about state legislative districts or matters.

b) The comment I made to Sen. Rucho had nothing to do with either urban voters or whether Hispanic or African American voters "vote for the same candidates." Instead my comment was to the effect that my general impression has been that African American and Hispanic constituents in my congressional district have tended to agree on federal issues on which I have voted. Consequently, in 12th congressional district elections both African American and Hispanic voters have tended to support my candidacy.

c) I remember having a conversation with Sen. Rucho about Rep. Mike McIntyre's experiences with Native American and African American constituents in his congressional district on some federal issues. However, I never expressed the opinion attributed to me that "Native American voters do not tend to vote for the same candidate and are not politically cohesive" and none of my experiences would have qualified me to make such a general statement or express such an opinion.

I regret very much that you either misunderstood any comments I made or have found it convenient or to your perceived advantage to take them out of context or misrepresent them. My interest in submitting this letter and asking you to make it a part of the public record is solely to set the record straight.

Sincerely,

/s/ Melvin L. Watt
Melvin L. Watt

cc: Senator Floyd McKissick, Chairman NCLBC
Senator Malcolm Graham
Representative Kelly Alexander
Representative Beverly Earle
Representative Earline Parmon
Senator Dan Blue
Representative Angela Bryant